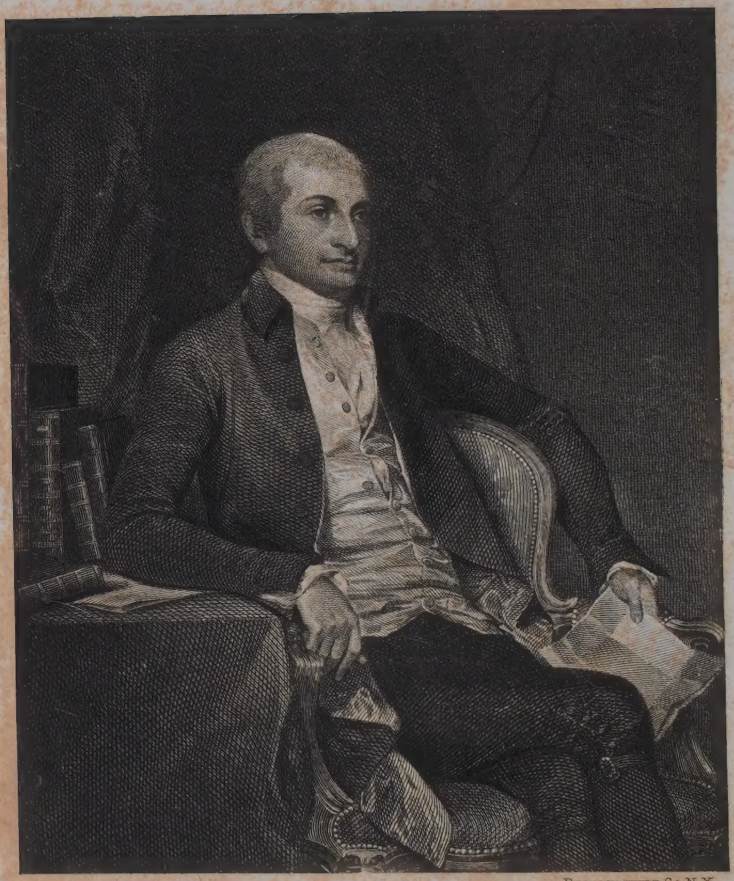

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John Jay

THE

LIFE AND TIMES

OF

JOHN JAY

SECRETARY OF FOREIGN AFFAIRS UNDER THE CONFEDERATION

AND

First Chief Justice of the United States

WITH

A SKETCH OF PUBLIC EVENTS FROM THE OPENING OF THE REVOLUTION TO THE ELECTION OF JEFFERSON

BY

WILLIAM WHITELOCK

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THIS SKETCH

OF ONE OF THE MOST EFFICIENT PROMOTERS AND EARLIEST EXPOUNDERS OF THE CONSTITUTION,

Is Affectionately Dedicated

To M. S. H.,

ON THE ONE HUNDREDTH ANNIVERSARY OF THE PROMULGATION OF THAT INSTRUMENT.

Baltimore, Sept. 17, 1887.

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THE LIFE AND TIMES OF JOHN JAY.

I.

PRELIMINARY.

IF the value of a man's services to his country is to be measured by the variety and importance of the public positions he has filled, no statesman of America is more entitled to its gratitude than John Jay.

Of the many eminent names which adorn its earlier annals, it would be difficult to point to one possessing stronger claims to respect and admiration for the entire harmony of his intellectual and moral endowments, the high purposes to which these were applied, his freedom from passion, and his discriminating and unclouded judgment.

Though not cast in the heroic mould, nor making a luminous mark upon the page of history, yet, as Ambassador, Secretary of Foreign Affairs, Chief Justice, Governor; as aiding in the establishment of independence and the adoption of the Constitution, — he exercised great and enduring influence and

proved himself always equal to the duties that he assumed. To their performance, he brought those virtues which dignify and adorn private station, but are too often strangers to official rank.

His purity of character, ability, inflexible resolution, and devotion to principle, won him the life-long friendship of Washington, and the many distinguished men with whom he was thrown; and it is therefore well to weigh his services, and endeavor to fix his place among those who gave impulse and permanent direction to the nation's political development.

The prejudice which obscured the fame of the leading Federalists has now in a measure died away, and the time arrived when an unbiassed estimate may be formed upon the conduct of those who for so long a period were denied a hearing at the bar of public opinion. Jay was particularly unfortunate. He never appealed from the slanderous imputations which at one time assailed his reputation; and as he withdrew into private life, with the overthrow of the Federal *régime* a few years later, it has been tacitly assumed that these aspersions, disseminated for party ends, had their foundation in truth. Hence a shadow has been permitted to rest upon the name of one "whose worth is much greater than his fame."

The extensive publication of the correspondence of prominent Federalists made during the past half-century, has cast a flood of light upon their charac-

ters, showing them to have been earnest patriots, inspired by no selfish motives, but seeking to promote the welfare and happiness of the country, by measures which met the approval of their best reason and conscience. "The Life and Correspondence" of Jay, by his son, was one of the earliest of these productions. It has now passed out of print, and is known but to few of this generation. As one of the leaders of a great national party, John Jay must always be an imposing figure in the political history of America. The story of his career, if again told, may therefore prove of interest, and even possess the attraction of novelty, to readers of the present day, supplying the young with the needed lesson, that "Corruption wins not more than honesty," and that official station is not necessarily associated with self-seeking, and should not be pursued for its emoluments.

Jay's life may be not unequally divided into three distinct periods, strikingly coincident with his bachelor, wedded, and widowed condition, — the first, to the date of his engaging in public affairs; the second, from that time to the inauguration of Jefferson; and the last, embracing the twenty-eight years of his retirement. It is with the second that we have chiefly to deal. He entered the service of his country with the opening scenes of the Revolution, and continued in it for twenty-five years. In all that

time he enjoyed the confidence, and participated in the counsels, of the men who shaped its destinies, displaying under all circumstances the qualities of a Christian statesman, loyal to the highest principles of rectitude.

It may be thought that the following work is of too historical a nature for a biography: but for a full understanding of the causes which led to the independence of the Colonies, and Jay's consequent participation in national affairs, it has proved necessary to go back and trace events prior to the Revolution; from that date to his retirement, his life was so blended with the country's history as to be incapable of separation: while the narrative may lose none of its interest on this account, it is thereby deprived of much of its epic character.

His memoirs can be written only from an objective stand-point. They would fail who should undertake to give to the world a view of the inner emotional life of such men as John Jay and George Washington. Hence, the elaborate biographies of the latter, written by Marshall and Irving, are mainly a rehearsal of public events.

Mr. Jay, as a distinguished Federalist, was the object of the most unsparing attacks by the party associates of Jefferson; and a review of his life is the best refutation of their charges. As it is believed that many of these emanated from the Republican

leader, it has been thought necessary that his own motives and conduct at the time should be displayed. This has been done, we would fain hope, without prejudice, and with a proper regard to justice and historical truth.

In preparing the ensuing sketch, we have freely availed ourselves of the labor of those who have investigated the stirring period that it covers, and have adopted their opinions when they have met the approval of our own judgment.

II.

YOUTH AND MANHOOD.

JOHN JAY, the eighth child of Peter Jay and Mary Van Cortlandt, was born in the city of New York on the 12th of December, 1745. Religious intolerance had originally driven one branch of his family from Bohemia into Holland, while another had fled from the persecutions following the revocation of the Edict of Nantes; and he thus inherited the stern morality of the Huguenots with that love of freedom in all its forms which characterized the sturdy Dutchman. As far as the line of his ancestors can be traced, it is uniformly marked by intelligence, enterprise, and thrift, combined with fervent piety and patient endurance. The knowledge of this rich inheritance unquestionably did much to inspire their descendant to emulate them.

> "How sharp the spur of worthy ancestry
> When kindred virtues fan the generous mind!"

Jay's father was a man of vigorous intellect, sound judgment, and pure morals; and these admirable qualities were durably impressed upon the ductile

mind of his son. Embarking early in mercantile pursuits, and having by middle age acquired what was then deemed a competency, he retired to Rye, Westchester County, near New York, while John was yet an infant. Two of his children had been deprived of sight by improper treatment during an attack of small-pox, and this misfortune was probably one cause of the family's removal to the quiet of a rural village. The mother, like other matrons of the time, was devoted to her domestic duties; but, unlike most of those matrons, she possessed a cultivated mind, and hence was able herself to superintend the early education of each of her numerous children. The eldest son was graduated as a physician, and, proceeding to Europe with the view of perfecting himself in his profession, was there employed on behalf of King's College, and subsequently received the honor of knighthood from his sovereign. Prior to the breaking out of hostilities with the mother country, Sir James Jay returned home, and, with other members of the family, entered the service of the Colonies. Those incapacitated by blindness were protected and supported by John, when at times his own circumstances were straitened by the war; and a considerable degree of self-denial was required for the performance of this duty. His brother Peter repaid the sacrifice with the deepest devotion, and, notwithstanding his affliction, acquired a liberal edu-

cation, and proved himself an influential and useful citizen. Of a gentle and retiring nature, John appears to have been much of a favorite with his mother, who instructed him in the rudiments of the English language, as well as in the Latin grammar. His progress in these studies must have been satisfactory to both parents, as, before he reached his eighth year, the father could write to a relative, "John takes to learning exceeding well;" and again, a little later, "My Johnny gives me a pleasing prospect, is endowed with a very good capacity, and is fond of his books." The love, respect, and consideration that he always bestowed upon his parents testify that their affectionate care during these years was not lost upon him.

After spending some time, first at an ordinary grammar school, and afterwards with a private tutor, he became, at the age of fourteen, a freshman of King's College, then under the charge of Dr. Samuel Johnson, a ripe scholar and cultured gentleman. The institution was in its infancy; and its curriculum was, therefore, not very extensive. It is fair, however, to suppose that the students, in their regular course, were thoroughly grounded in every branch of learning pursued within its walls. They were, as yet, few in number; but among them was Robert R. Livingston, Jay's junior by a year, who was soon to be joined by Gouverneur Morris.

Between Jay and these two a close friendship was established. We may fancy them roaming amid the forests then growing where the City Hall now stands, discussing the terms of peace just proclaimed, the bravery displayed by a young Virginia colonel at Braddock's defeat, or, perhaps, revelling in the happy prospect which seemed to be opening for the English race under the youthful king who "gloried in the name of Briton." The great future of New-York City was as deeply hidden as was the eminent destiny of these young men. Emerson says, "If the companions of our childhood should turn out to be heroes, it would not surprise us." A boy, like the poet, lives in his day-dream; but the most vivid imagination could hardly foretell, that, in early manhood, these friends would assist in wresting their country from the rule of its sovereign, and that, later in life, they would all occupy high positions in its service abroad, — that one of them would be called upon to sign a treaty establishing its independence, and another to negotiate one adding vast provinces to its original domain.

A country grammar school had not grounded Jay very thoroughly, and he now applied himself with resolution and perseverance to supply the deficiency. Truly, the child is father to the man; and all that education can accomplish is to develop the germs already implanted, leaving auspicious circumstances

to unfold the character. It is always interesting to turn back the page, and revert to the youth of those who have become distinguished, and compare the promise of that spring-time with the autumn of its fulfilment. We find little recorded of Jay's boyhood; but the details of his college life, though meagre, are honorable, and marked by the same pure morals and high principles which then winning him the friendship of Dr. Johnson, afterwards characterized his career in life. A few weeks before his expected graduation, an incident occurred which strikingly illustrates his truthfulness and firmness. His associates had been catechized, to learn which of them was guilty of a certain offence. Jay was asked if he knew the transgressor. He replied, "I do." — "Who was it?" — "I do not choose to tell." This refusal, though claiming the respect of the faculty, caused them to suspend him for a year. A later occurrence, trifling in itself, is recorded as indicating the affection that existed between the embryo lawyer and his family. When entering on his clerkship away from home, he sought his father's permission to keep a horse, that he might be enabled to spend a day every fortnight with his parents. The request was granted.

The population of the city of New York did not, at that time, exceed twenty thousand. Its inhabitants still retained many characteristics of the first settlers, and were exclusive in their social life; yet

Jay, a descendant of Mary Van Cortlandt, could have been no unwelcome visitor at the Knickerbocker firesides. The opulent and cultivated family of Judge Livingston, dwelling at Clermont during the summer, spent their winters in the city, dispensing at both places a generous hospitality. His intimacy with the eldest son, — the future chancellor, — doubtless caused him to be a frequent guest at their table, and his character and manner to be greatly moulded by this familiar intercourse. The judge was genial and affectionate, a determined opponent of British aggression, and soon after became a member of the Stamp-Act Congress. He was deeply interested in public affairs, and, in the freedom of private life, would be apt to discuss the proceedings of Parliament, and point out to the youthful visitor the danger to be apprehended from submission by the Colonies to its assumed jurisdiction. Young Jay, too, must often have played with the attractive and sweet-tempered child, — the Benjamin of the household, destined to develop into the future philanthropist and statesman, his distinguished adversary, — Edward Livingston.

Johnson, retiring to England, was succeeded in the presidency of King's College by Myles Cooper, celebrated alike for his attainments in theology and literature, and for his high Tory notions of royal prerogative. Jay was graduated a few months after

that gentleman's inauguration; but political differences never impaired their friendship, and he was in after-life always accustomed to speak of the doctor in terms of great respect. Hamilton entered the college after Jay had left, and, at seventeen years of age, had the rare honor of breaking a lance through the press with his preceptor, and of subsequently protecting him against an exasperated mob to whom he had rendered himself obnoxious.

Having passed with credit through his collegiate course, Jay selected the law as a profession, and soon entered upon its study under the guidance of Benjamin Kissam, an eminent practitioner. It was then a rugged and uninviting pursuit, requiring the utmost perseverance to become its master. Blackstone, about that time, was delivering his celebrated lectures in London; but the American student had to delve among the black-letter of the early fathers in order to acquire a knowledge of the principles of legal science. Four years of close and diligent application intervened before Jay was admitted to the bar. The amiable Lindley Murray, well known for his grammatical and other educational works, was in the same office, and in his autobiography thus refers to his associate: "His talents and virtue gave at that period pleasing indications of future eminence. He was remarkable for strong reasoning powers, comprehensive views, indefatigable application, and

uncommon firmness of mind. To these were added a just taste in literature, and ample stores of learning and knowledge." No man was more successful than John Jay in winning the kindly feeling and respect of those with whom he was thrown; and though he differed in religious and political principles from the plain Friend who thus wrote, the affection of Murray continued unabated to the close. Ere Jay had entered upon the practice of the law, the relations between him and Kissam had become most friendly and confidential, and so continued until the decease of the latter. Jay said, "He was one of the best men I ever knew, and one of the best friends I ever had." It is pleasant to know, too, that during the political troubles which arose, they stood side by side, aiding and upholding to the utmost the constitutional rights and honor of the country.

Upon being called to the bar of his native city, Jay formed a professional connection with his friend Livingston, which, however, was soon dissolved, they probably thinking that each would succeed better in procuring clients if alone. Nor was Jay disappointed. He was not condemned, like many, to idly pace the courts from year to year. His ability, probity, and industry were recognized by his fellow-citizens, and early obtained for him a practice lucrative for that time. His close application to business soon impaired his health, which was only restored by active and

constant exercise. A dispute having arisen between New York and New Jersey about their respective boundaries, the British authorities appointed a commission for its adjustment, and of this he became secretary. His duties as such exacted a large portion of time, and involved considerable labor; but they early terminated, after having brought him prominently before the officials of the province, thereby increasing his reputation.

Soon after his admission to the bar, its leading members founded a weekly club for the purpose of "social conversation and mutual improvement." Among them were Smith the historian, Jay, Benson, the two Livingstons, Morris, and Duane. The introduction of "party politics of the Province" was prohibited; yet, with the patriotic feelings entertained by several of them, the recent measures of the ministry were undoubtedly well ventilated. With the humorous and genial William Livingston and Kissam among the number, at least *one* purpose of the club's formation was carried out. It is known that its discussions materially influenced the judgment of the Superior Court, which referred to its decision a point relating to legal methods.

Jay's membership probably led to his introduction into the home of William Livingston, and a subsequent meeting with that gentleman's daughter, Sarah Van Burgh Livingston, then entering upon her six-

teenth year. A more intimate acquaintance proved that the qualities of her mind equalled the attraction of her person, and the heart of the young lawyer was made captive. The marriage between them did not, however, take place until the spring of 1774, after her parents had removed to the town of Elizabeth, N.J. The chronicles of the day report that Jay "was wedded at Elizabeth to the beautiful Sarah Livingston, and a large proportion of the notable people of New York were present." That the union between them was one of affection, and not a *mariage de convenance* on either side, is testified by thirty years of unclouded domestic happiness; and the letters of his parents indicate that the wife soon won and retained the love of her husband's family. Her private life was thenceforth shaped and controlled by public events. Jay was now, as the master of a household, settled in his domestic relations, and might properly look forward to a long and successful professional career. He had reached the front rank at the bar of the city, and had already established a reputation for legal attainments and forensic ability. Colden, the lieutenant-governor, in his despatches spoke of him as an eminent lawyer; and John Adams wrote that he was a hard student and good speaker. As a man, he possessed the confidence of his fellow-citizens, and was not more respected for his talents than for his moral worth.

His marriage gave him a firmer hold upon the community, and a deeper interest in its welfare; while his father-in-law having lately withdrawn from the bar, he might naturally look to his aid in gathering the residuum of his large and successful practice.

But a change soon came. The country had more important work for him than protecting the interests of individuals in petty provincial courts. Though his convictions were clear as to the justice of the colonial side of the controversy with England, we possess no evidence that he had, with his pen, participated in it. The discussion had taken place mainly between the period of his admission to the bar and the date of his marriage, when he was closely occupied in seeking clients, and in winning the affections of Miss Livingston. While the mother country had steadily adhered to her purpose of colonial taxation, she wavered, at times, as to the mode of accomplishing it; and he possibly supposed that the trouble would be settled by the withdrawal of her pretensions. Even after the tea had been destroyed at Boston, he might well have thought that she would hesitate before undertaking to punish an entire community for what might be deemed the sudden outbreak of an excited populace.

If such was his expectation, the illusion was dispelled ere the last quarter of his honeymoon had passed. The enforcement of the Port Bill convinced

him that the dispute between Parliament and the Colonies had reached a crisis which demanded his interposition. Without hesitation, he entered upon the broad field of political life opening before him. Such a step implied great labor and self-sacrifice, as well as the abandonment of his profession; but it was the path of duty, and led onward to high honor. Six years' faithful practice of his profession had eminently qualified him for public service; and, once actively enlisted in the cause of his country, he never rested on his arms until her position had been triumphantly vindicated, and her independence acknowledged.

III.

COLONIAL TAXATION.

THE relation between England and her American possessions differed essentially from that which France and Spain had established with theirs. Instead of being royal provinces, planted by a king who exercised supreme jurisdiction over them, and derived from them a direct revenue, they were mostly held under grants of varied powers and extent, made to individuals or companies, a common sovereign being the only tie binding the colonist to his countrymen at home. The greater number of the grants contained an express declaration that emigrants and their children should be deemed natural-born subjects, and enjoy the immunities and privileges of such; and that the laws of England should, so far as applicable, be in force, and all made in America conform thereto. The king had conceded franchises, and assumed protection, and in return exacted allegiance from the settlers. Each colony was held by a separate charter, or grant, and was entirely independent of its neighbors; but all were debarred from

commercial intercourse with foreign nations; and their inhabitants, as freemen, inheriting the common law, could not be taxed, except by their own representatives.

Fortunately, English statesmen of all parties affected to believe that they had been planted and were held simply for the development of the commercial and manufacturing industry of the mother country. This was the central idea of all her legislation. The Americans yearned to be considered in the light of her progeny, but she insisted upon treating them as inferiors and dependents. With the purpose of securing a portion of the Dutch carrying-trade for its own people, the Commonwealth had, in the year 1660, passed the celebrated navigation law, which, after the Restoration, was re-enacted, and its scope enlarged. It had originally permitted some traffic between the Colonies. In its new form, it prohibited their importing any merchandise, except when shipped direct from England. Not satisfied, however, with this, the royal Parliament demanded, under William, that all exports should be made to that country alone; thus in effect inhibiting trade, except when a profit was realized by the English merchant and ship-owner. In addition to furnishing the colonist with his supplies of every kind, England aimed at a complete engrossment of his exports. Thus, Massachusetts and Virginia were unable to

exchange their fish and tobacco, except through her agency. In a word, her ports were made the sole mart for American products, and her manufactures the only ones to be used. Burke testified truly that it was a grasping monopoly.

It is not, therefore, surprising that her commerce and naval power grew and expanded, nor that she was able to sustain the heavy drain caused by her numerous maritime and continental wars. Secure from attack upon her own soil, with her industry undisturbed, and her productive Colonies contributing their share of wealth, she prospered in the midst of hostilities which would have exhausted the resources of any other European nation of the time.

A system thus violating justice and the laws of trade was incapable of rigid enforcement, and hence illicit traffic was, to a large extent, pursued; but the tenor of the provisions indicates clearly the sentiment which prevailed down to the time of the Revolution. Any liberality in legislating for the Colonies was unknown, and all freedom of trade was discouraged and repressed. "Our possessions" and "our subjects" became the expression of a general feeling; and even Chatham, Whig as he was, and opposed to their taxation, declared in Parliament that he would not permit a hobnail to be manufactured in them, forgetting that a prohibition of the kind was in reality a tax levied upon the American consumer.

The policy of England being thus of an exclusively commercial character, and pursued for her own advantage and national aggrandizement, little attention was given to their political condition; and they were permitted, in a great measure, to develop their domestic institutions, which, from the necessity of the case, could not be other than democratic. The foundation was laid at their settlement. The birthplace and home of feudalism was in Europe. Aristocracy is not the material of which emigrants are made; and in most of the Colonies, a sufficiency of wealth had not yet been created to cause a division of social rank. So long as there was no interference with their self-government by the authorities at home, and no attempt was made at internal taxation, opposition to England's requirements did not arise. They needed protection, and she afforded it. Capital was necessary for the transaction of business and the development of the country; and her merchants and bankers supplied the requisite funds, and granted a liberal credit to their transatlantic customers. The people were prosperous; and the tribute exacted from them was not seen, nor, indeed, acutely felt. Agriculture being their main pursuit, they paid little regard to external regulations which had been long established, and were not rigidly enforced. All the inhabitants displayed a strong attachment for that country from which most of their ancestors had

sprung. Thence had been derived their cherished ideas of personal liberty and popular rights. They were proud of her glory and greatness; and a common origin called forth their affection, and drew them to her. Four centuries of parliamentary life, with its grand associations, belonged alike to the two countries. English literature and English law were a mutual heritage, and the language of the Bible and Shakspeare was their mother tongue. The love of country, even if transplanted, had not yet taken deep root; and to England the colonists still applied the endearing appellation of "home." Their sympathy for the land of their forefathers had been evinced by pecuniary assistance extended when misfortune had there arisen, and men and money had been liberally contributed to fight the battles of the parent state in all parts of the world.

Such were the relations between the countries down to the close of George the Second's reign. While, in return for the protection extended to her American colonies, England monopolized their imports and exports, both yearly increasing in magnitude and value, she yet largely refrained from interfering with their internal regulations and political development. Their great distance from the central government had, at times, induced some of them to exercise unquestioned power of the highest sovereignty; and Massachusetts, a hundred years

before, had asserted that she possessed full legislative and executive authority. Altogether, English subjects in America enjoyed great freedom, and were prosperous, happy, and contented in their dependent condition. There is no doubt, however, that, as the colonies grew, and waxed strong, the connection would ultimately have undergone a change. Choiseul thought he foresaw the time when they would aim at independence, and the philosophic Turgot was satisfied that a separation was near at hand; but in the American correspondence and records of the time, we find no such idea broached, except as something that might occur in the distant future. It was for a king who wished to govern as well as reign, supported by a minister with contracted views of public policy, to disturb the harmony, and finally to sever the bonds, between the mother country and her progeny across the Atlantic Ocean.

England had emerged from the Seven Years' War, rich in the spoils of conquest, and proud of her military renown, but burdened with a debt which appalled the taxpayers of the United Kingdom. The people had been scandalized by the open licentiousness of the late king; and the pure morals and domestic virtues of their young sovereign, while concealing his narrow intellect, won him a confidence and respect soon to be rudely shaken by the expulsion of Wilkes, "The Letters of Junius," and the

American disturbances. Profoundly impressed with the dignity of his station, conscientious, prejudiced, and stubborn, his personal influence over national affairs was always marked; and in the early part of his reign, the genius of the English Constitution was, at times, by the force of a strong will, made to bend to his wishes.

After the close of hostilities with France, the most important matter claiming the consideration of the cabinet was an adjustment of the revenues to meet the demands upon the treasury. The principles of Newcastle and Walpole still predominated, and, since the retirement of Pitt from the head of affairs, corruption had been steadily increasing. With rare intervals, the Tory leaders had been debarred from public office for more than half a century; and now that the Whig oligarchy was overthrown, provision had to be made for the victors and their needy followers. Government loans were distributed among these latter, to be afterwards resold at a large profit: seats in Parliament, for ministerial supporters, were purchased with public money, and its benches were thus filled with pensioners and placemen. Attention had been drawn to this condition of things as sapping public virtue and private morals, and its baneful influence upon the legislation of the country pointed out. How to increase his power, provide for his new friends, and mollify the taxpayer,

was now the problem before the king, pressing for a solution.

He called to his assistance a younger brother of Pitt's wife, a statesman who had given some study to the subject of revenue, and who, like other ministerial specialists, deemed that all government was embodied in that part which he best understood. Burke happily described Grenville as "one of those who believe regulation to be commerce, and taxes to be revenue;" or, as Swift said of a predecessor, "he thought the whole art of government to consist in the importation of nutmegs and the curing of herrings." The king, whose perception of character was quite accurate within a limited range, pronounced him a solemn prig; but his manner in the closet was condoned by the measures he advocated in the cabinet, and for these he was tolerated. Where could the minister better turn for relief to his sovereign than to the dependencies across the Atlantic? That they were prosperous, and able to sustain a heavy tax, was evident; for they had voluntarily contributed an undue proportion toward the late war, and the supreme legislature had recognized this patriotic action by refunding them a part of the excess. The amount he proposed to draw from them would in the beginning be small; but, the principle once admitted, it could be indefinitely increased. The policy he suggested was that all the colonies —

chartered and proprietary alike — should be reduced to the same condition as the royal Provinces; that a direct and permanent income should be derived from them, while, at the same time, the commercial regulations heretofore enacted were to be rigidly enforced. Other measures were to follow, which, together with these, would effectually destroy their illicit yet lucrative traffic. In other words, the policy of making them profitable simply as a market for British productions was to be abandoned, and recourse had to the Spanish system of extorting from them a direct revenue.

It will be readily perceived how acceptable such counsels were to the king, who wanted to stop the murmurings of the taxpayer at home. His intention from the beginning had been to become independent of the Whig party, and he was resolved to make his government one more purely personal. The patronage beyond the sea, thus thrown into his hands, would in time enable him to accomplish these ends, while providing offices for his courtiers and the decayed aristocracy. The nation's support of the contemplated measures was calculated on, as the burden of taxation would thereby, to a considerable extent, be shifted upon the shoulders of those whose complaints would be unheard in Parliament, and whose influence unfelt at the hustings.

Sir William Keith having suggested a Stamp Act

for the colonies early in the century, Grenville chose a similar plan as the one with which to begin, and notified the colonial agents of his intention to allow them twelve months to ascertain the feelings of their constituents before carrying it into effect. In conversation with Dr. Franklin, he avowed his fixed determination to compel the colonies to contribute their share to the support of the imperial government, but expressed a willingness to substitute for the proposed tax, one more agreeable to them, if such could be found. Franklin, on his part, does not appear to have objected to the principle of colonial taxation upon the ground of its unconstitutionality, probably for the reason that in Pennsylvania — which province alone he then represented — this right had been reserved to Parliament. A similar proviso was not, we believe, in any of the other charters.

In pursuance of the course adopted, the Commons resolved that it was expedient to charge in America certain stamp duties, such as were paid in England; and notice was given that a bill to that effect would be introduced the following year. The resolution was skilfully drawn to allay opposition, and its conditions seemed equitable. Surely, the Americans would not object! It proposed to lay upon them only a part of the burden borne by their fellow-sufferers in England, and the revenue contributed by them was to be spent for domestic purposes. The

tax was indirect, moderate, and, as it was self-collecting, would require the appointment of but few officials.

When the measure came before Parliament at the next session, no protest was heard; for being a money-bill, against which petitions are not received, it passed both Houses without attracting any especial notice from the Liberal members. The Lords were unanimous in its favor. Well was it, however, that the people of America were more alive to the danger to be apprehended from this cloud no bigger than a man's hand, yet which, increasing in volume, and descending, would eventually sweep away the dikes which their ancestors had by a free expenditure of blood and treasure erected to stay the steady flow of executive encroachment. Fortunate, too, was it for the cause of freedom, that they were endowed with virtue enough to resist its approach. It may be questioned whether the minister, after having announced his intention of introducing the Stamp Act, did not make a mistake in deferring its passage for so long a time. Had he at once carried out his purpose, the opposition in the colonies would have been sporadic, and perhaps readily overcome before the lurking danger was generally perceived.

It was only at a later date that the Whig statesmen of England realized that the success of the king's policy in America might be followed by the

establishment of arbitrary and military rule in their own country, and the throne so strengthened as to impair domestic institutions. As Burke expressed it, "It will become an apt, powerful, and certain engine for the destruction of our freedom here in England."

The bill passed Parliament in March, 1765, and was to take effect the following November. We have seen that the attention of the colonists had already been drawn to its provisions, yet the news of its enactment was received by them at first as a staggering blow. Soon the great deep of colonial life was stirred, and denunciations of it were heard from one end of the country to the other. It was an insidious proceeding that must be resisted at the outset. The amount assessed on Hampden was but a few pence, yet it had involved the liberties of a nation. When the eventful day arrived, bells were tolled, and muffled drums sounded. Tax-agents were forced to resign; and in some places the people determined to ignore the Act, and proceed in business without complying with its requirements. In other portions of the country, merchants agreed to import no more British manufactures after the New Year, unless it should then have been repealed. In New York, Colden, the lieutenant-governor, was burned in effigy, and compelled to seek refuge in the fort with the stamped paper. The Virginia House of Burgesses

was in session when the news of the action of Parliament was received; and on the motion of Patrick Henry, then a young lawyer, it was resolved that the General Assembly had the exclusive authority to levy taxes, and that whoever maintained the contrary should be deemed an enemy of the province. Massachusetts took the alarm, and, asserting her sole right to pass laws binding her people, invited her sisters to join with her in opposing the measure.

James Otis further stimulated public feeling by the publication of a work demonstrating that all taxation of the people of America by Parliament was inconsistent with their rights as native-born subjects. A tendency to unity might be noticed about this time in the occasional substitution of the term "American" for "Colonist;" and as the trouble was generally attributed to the arbitrary counsels of Lord Bute, a North Briton, the word "British" began to assume the place that "English" had previously held.

In compliance with the suggestion of Massachusetts, delegates from nine colonies assembled at New York in October. This body denounced the imposition of taxes upon them without their consent, entered into a non-importation agreement, and petitioned the King and Parliament for a redress of their grievances. When an account of these proceedings reached England, it produced a profound sensation throughout all classes. Parliament was not in ses-

sion at the time, and the ministry were at a loss to know by what means to overcome the passive but determined resistance of a united people. No military force was on the spot, nor would such have been available. The judges of the colonial courts sympathized with the opposition, and the juries were made up of those who set the enactments at defiance. The attention of the Whig leaders abroad was at last drawn to the danger to be feared from enforcing the claim of supremacy, and the cause of the colonies found eloquent and efficient advocates when Parliament again assembled. Ere that time, the king's dislike of Grenville had resulted in the establishment of a new administration under Rockingham with Burke as his private secretary, and Dowdeswell as chancellor of the exchequer. A cabinet of this complexion, entering upon office under such circumstances, could but advise the repeal of a law manifestly contrary to the spirit of English institutions. The king, on the other hand, looking upon the uprising in America as subversive of all authority, and a denial of the jurisdiction of the home government, was opposed to this procedure. After considerable hesitation, he finally yielded his assent, provided a clause should be attached to the Act of repeal asserting the power to bind the colonies in all cases whatever. Fatal reservation! However the patriots of America may

have differed in opinion as to the supremacy of the King and Parliament, this would, if enforced, necessarily drive them all into resistance. It would sweep away at one stroke every vestige of civil liberty. Chatham declared the Magna Charta, the Petition of Right, and the Three Statutes, were the Bible of the English Constitution; but the colonist could under this claim be deprived of every right that they secured to English subjects at home. Rockingham remained in office scarcely a year, when a re-organization of the ministry took place under the newly created Earl of Chatham, with Charles Townsend as chancellor of the exchequer.

Upon the partial adjustment of the difficulty, agitation at once subsided in America; and the people, fancying their victory had established the principle that they could be taxed only by their representatives, anticipated no further trouble. It was true, that, while removing the present grievance, the paramount authority of Parliament had been emphatically asserted; but this, it was assumed, had been done to save its pride, and with no purpose of enforcement except as heretofore, in the regulation of their commerce. In New York, the repeal was looked upon as a final settlement; and, in the exuberance of their joy, the people dismantled a ship, and planted its mast on a high part of the city, surmounted with busts of George III. and Chatham.

IV.

THE DESTRUCTION OF TEA.

CHATHAM had entered the ministry in obedience to the public demand; but his health was shattered, and only at long intervals was he able to attend its meetings, or even to be consulted about questions under consideration. It was, in fact, a body without a chief to formulate a policy, and carry it into effect; and thus it drifted along as the tide served. Townsend, among his contemporaries, bore the reputation of possessing brilliant parts, though volatile, wilful, and unstable in character. In America he is chiefly remembered as the progenitor of a measure which re-opened a controversy between England and her dependencies that finally led to their separation. During a debate in the House of Commons, he incautiously pledged himself to prepare a bill which would secure a revenue from the colonies without arousing their opposition. Chatham could not be referred to at the time; and a Whig cabinet thus became committed to a project, against the principles of which its members had hitherto protested.

Townsend's plan, when introduced, was found to embrace the imposition of a duty upon tea, paints, and glass; while, to render it less distasteful to the Americans, the revenue derived therefrom was to be applied to the support of their local governments and the maintenance of their judiciary. As enacted, it further provided for the establishment of a board of trade at Boston, and legalized the writs of assistance, which Otis, with impassioned eloquence, had denounced as unconstitutional. It also required naval officers to enforce the various provisions relating to commercial intercourse, thus destroying a prosperous traffic with the British and Spanish West Indies. Later on the assemblies were called upon to supply the military force then at hand with certain specified articles, and to furnish them with suitable quarters upon landing.

Contrary to Townsend's anticipations, the colonists objected to this entire scheme, and failed to appreciate his generous proposal to disburse the money for their benefit. They needed no protection from domestic enemies, and treasured the right of maintaining their courts and governments themselves. The New-York Assembly was summarily suspended for refusing to supply military stores, while the General Court of Massachusetts was dissolved for the same offence; and the troops which had arrived, were, by order of the authorities, quartered in Faneuil Hall and other public buildings.

Sherlock, the Bishop of London, had proposed to the king the erection of America into an episcopate of the Established Church; and the rumor of this, getting abroad, created general alarm among the New-England congregations. A jealousy of the designs of the mother country was by this time thoroughly aroused, and a determination to resist her encroachments common to all.

Louis XV. had watched with deep interest the opening of the quarrel, and in 1764 despatched Pontleroy to America to report the feelings of the people. Four years later, Choiseul, believing the fulfilment of his prophecy near at hand, directed his minister at St. James to employ a trusty agent; and the future Baron DeKalb accordingly traversed a portion of the country, for the purpose of observing public sentiment.

In the controversy growing out of the proceedings of the Home Government, nothing is more remarkable than the superior ability with which the American side was handled. Its advocates were men who had early become conversant with Blackstone's exposition of the common law. Their dearest interests were involved. They had studied the questions at issue, the principles lying at the foundation of government, and by skilful logic laid bare the arbitrary nature of the ministerial measures. On the other side were hackney writers with no personal feeling

in the matter, working for their pay, or, like Dr. Johnson, serving the ministry in return for favors already received. The village leaders became imbued with patriotic arguments, and were prepared, in their turn, to impress them upon their immediate followers. The agitation was extreme. Each hamlet had its meetings, and every household grew familiar with the subject.

It is ominous of change when a people distrust the ground on which sovereign authority is based. The inquiry now arose among the colonists as to their relation towards the parent state, and whether the fact of her subjects settling in America established England's claim to assume jurisdiction over them, or even to control their commerce in the manner heretofore conceded. Jay subsequently declared that it did not, and that they had the right to form whatever style of government they pleased. The cardinal principle, that taxation and representation are inseparable, had been emphatically ingrafted on the English Constitution. Yet it was asserted, that, under the guise of regulating trade, they were practically divorced in America. The King and Parliament had before claimed the power to prohibit manufactures, and determine with whom the people should trade. They now undertook to modify the provisions of the charters under whose guarantees settlements had been effected; to keep up a standing

army in the country, and compel taxes to be levied therein for its support.[1] The royal governors were instructed to withhold their approval of other assessments, and the revenue officers were empowered to search houses for contraband goods without a specific warrant based on probable cause. The authorities were required to enact certain laws; and in the event of refusal, their meetings were to be suspended. It was, moreover, decided that the superior judges should hold office at the king's pleasure alone, and not during good behavior as in England, the inferior ones being removable at the discretion of the governor; that political offenders should be transferred into a foreign jurisdiction where a trial by their peers could not be obtained, while the sheriffs were to be appointed by the governors with authority to select juries which had heretofore been chosen by the inhabitants. It was shown that these claims were tyrannical and dangerous; that in the previous century the attempted enforcement of some of them had caused a predecessor of the king to lose his head; and that, if successfully established, life, liberty, and property, in the colonies, would be held only by the sufferance of an irresponsible power be-

[1] Burke, their agent, wrote to the New-York Assembly that "prerogative was to be strengthened as much as possible; and it was thought expedient to find in the tractable disposition of some provinces a check upon the turbulent manners and a balance to the less manageable plans of government in others."

yond the sea. The aristocracy of England had been mainly aggrieved by the proceedings of the second James. The exactions in royal France had crushed the peasantry, while these affected alike all classes in America.

As yet, there was a difference in the reasoning of the popular leaders. Some drew a distinction between taxes laid for the purpose of raising a revenue, and those for the regulation of commerce. Others admitted the supremacy of Parliament, but denied the right of taxation by a body in which they were not represented; while many went still farther, and believed that the king and provincial legislatures alone had the power to impose it upon them. All, however, acknowledged that allegiance was due the sovereign, but claimed that there were correlative rights and obligations, and, while recognizing the fact that the colonies had been settled without aid from the king, were yet, in return for protection against foreign enemies, willing to concede to the Home Government the regulation and monopoly of their commerce as heretofore, and contribute voluntarily to the common defence of the empire.

It was not yet too late for the King and Parliament to recede from their untenable position without loss of credit, and restore harmony; but such a concession was perhaps not to be expected from a stubborn monarch and a haughty assembly.

Upon the re-organization of the British cabinet, in the year 1770, Lord North became prime minister. Amiable in private life, of pure morals, genial, witty, and personally popular, he was, by subserviency to the king's wishes, destined to have his name intimately associated with the most corrupt and unfortunate period of modern English history. In quiet times, and under another sovereign, he would, perhaps, have proved a successful minister, but was by nature unfitted to encounter the storms then breaking upon the political world. He lacked sufficient greatness of character to resist the blandishments of the king, and when, by force of circumstances, compelled to yield, conceded just enough to discourage his supporters without conciliating his opponents.

The non-importation associations which had been formed in the colonies had the anticipated effect. Commercial distress ensued in England, and petitions for a repeal of the obnoxious Acts flowed in upon the two Houses from the manufacturers and merchants in all parts of the kingdom. At the instance of the prime minister himself, the imports laid three years before were removed, except one of threepence per pound upon tea; that being retained, as he said, to establish the principle of parliamentary right. To reconcile the Americans to this, a drawback of over sevenpence was allowed upon all shipments to them

from the United Kingdom. Encouraged by their partial victory, and looking upon this duty as imposed without authority, the people generally abstained from the consumption of tea, which, in consequence, accumulated in the warehouses of the East India Company. It continued to increase until that corporation became financially embarrassed, and, in 1773, was compelled to apply to the Government for relief. A further drawback was thereupon authorized, the whole being equivalent to the English import dues, thus enabling the Americans to procure their supply at ninepence less than their fellow-subjects at home. Under this provision vessels were freighted with the article for various ports in America. The proceeding brought the dispute between the countries to a direct issue. The colonists were unanimous in resisting the imposition of a tax the principle of which the English authorities strove to sustain by abating a larger duty than was necessary to be paid. Now or never the question had to be definitely settled whether Parliament possessed the right to levy taxes without the consent of the inhabitants.

Information of the shipments soon reached America; and by the time the vessels arrived, every preparation had been made. At some of the ports, the consignees were compelled to reship the tea; at some, its landing was prohibited; while at others, it

was stored in cellars and damp places, where it ultimately spoiled. At Boston more decisive measures were required. As Josiah Quincy said, she had been so galled without, and vexed within, that patience with her had ceased to be a virtue. The inhabitants of that place were resolved that the detested article should not be landed, while the governmental authorities were equally determined not to permit the ships to return without having discharged their cargoes. Fearing that, in spite of their watchfulness, the tea might be smuggled ashore, a number of reputable citizens, calling themselves "Mohocks," in imitation of the young bloods of London, boarded the vessels after dark, broke open the chests, and emptied their contents into the sea. After performing this resolute act in a calm and orderly manner, they quietly dispersed to their several homes.

The news of this occurrence provoked general indignation in England. It was looked upon as a defiance of Parliament, which, if permitted to pass unpunished, would induce the people to cast off all authority, and assert their independence. Feeling the contempt thrown upon it, that body forthwith launched its bolts against the town of Boston and the Province of Massachusetts Bay. At the instigation of the ministry, it enacted that the harbor of Boston should, after the first day of the following June, be closed against the landing and loading of

all goods, wares, and merchandise; and the custom house, with its officers, removed to Salem, where the Governor and General Court were directed to assemble. By a subsequent Act, the charter of the province was arbitrarily altered, all counsellors and judicial officers being thereafter appointed by the Crown. It was provided, moreover, that any person indicted for a homicide committed while aiding a magistrate, might have his trial removed to Great Britain or some one of the other colonies, and that, except at the time of an election, no public meeting should be held without permission from the governor. All the measures had the cordial support of the king, and some of them were prepared by the ministry at his suggestion.

By these sweeping provisions, the inhabitants of Boston — loyalists and patriots alike — were made to suffer for the destructive outbreak of a few individuals. An independent judiciary, which had been wrung from the first Charles, was laid at the feet of a sovereign who resembled him in character; and the people were deprived of the right to assemble, and protest against the proceedings of their rulers, however illegal and arbitrary their tendency. In thus prohibiting town-meetings, the ministry struck at the very life of New-England democracy. The power to levy custom dues once established, with a governor appointed and paid by the Crown, a judiciary holding

their seats at the pleasure of the king, and the citizens forbidden to meet peaceably, it is difficult to see what barrier remained against further encroachments by the Government.

When the purport of the enactments became known in America, the public mind was deeply stirred. Sympathy with the devoted town and province was everywhere expressed, and assistance proffered to their suffering population. It was felt that the punishment inflicted was not so much on account of the destruction of the tea as for the stand which all the colonies had taken in defence of their liberties. The blow had fallen where it did, simply because the earliest and most active opposition had been at that point; and the late series of measures was but the inauguration of a policy to overthrow the rights of all.

The Act closing the harbor went into effect at the appointed time, putting an end to commerce, and causing great distress among persons thereby deprived of support from their accustomed vocations. It failed, however, to break the spirit of the people, or to induce an abatement of resistance to the assumed authority of the imperial government. Delegations from several towns in the province assembled, and determined to discontinue importation from England; and a little later a most formidable weapon was placed in the hands of the Whigs by the organization of

Samuel Adams's "Committees of Correspondence." The General Court of Massachusetts vigorously protested against the parliamentary measures, and denounced the alteration made in the provision of the charter. It also prepared a circular to the other colonies, setting forth the necessity of harmonious action in the present crisis. The people, on their part, evading the law, held adjourned meetings from time to time, thereby keeping alive the fire of patriotism, and sustaining and encouraging their representatives in their independent attitude.

It was from Virginia that the most effective support came. Fortunately, her House of Burgesses was in session when information of the passage of the Port Bill was received. That body, under the leadership of Randolph, Lee, and Henry, at once entered upon its journal, and published abroad, a vigorous protest against the recent Acts, and, at the same time, set apart the first of June as a day of fasting, prayer, and humiliation. The ire of the governor was aroused by their boldness in condemning the proceedings of the imperial legislature, and an immediate dissolution of the House followed. Undeterred by his indignation, the late members assembled at the Raleigh Tavern, and denounced the Port Bill, affirming that an attack upon one of the colonies was an attack upon all. They further directed their Committee of Correspondence, which had by that

time been formed, to confer with similar bodies upon the expediency of the several colonies annually assembling in a general congress for the purpose of deliberating upon their common interests.

An American Parliament had always been deprecated by the English authorities. Penn, as early as 1697, had submitted to the Board of Trade "a plan for the union of the colonies;" and Franklin proposed a like measure at the time of the Albany conference, but both had failed. Now, however, the minds of the patriot leaders seemed spontaneously directed towards a union which had been made possible by the distress of Massachusetts; and the idea of a congress assumed a practical shape. The proceedings of the King, Ministry, and Parliament thus called into being an assembly representing American interests, and necessarily antagonistic to the pretensions of England. Throughout the entire controversy, prior to the Revolution, there was always displayed, on her part, an apprehension that her progeny were aiming at a separation and the establishment of that independence into which she was soon to drive them.

V.

PREPARING FOR A CONGRESS.

INFORMATION reached New York on the afternoon of May 16 that the harbor of Boston was soon to be closed, producing a profound sensation among the merchants, who thus beheld their own rights and fortunes subjected to the mercy of a foreign assembly, whose jurisdiction they had emphatically repudiated. They at once took counsel together, and nominated fifty citizens to form a committee of correspondence, solicit contributions, and in other ways aid and encourage their brethren of Boston. When a special messenger, bearing the intelligence, arrived the following day, a public meeting of the inhabitants was convened, and a list of the persons already chosen laid before it for approval. Several of the prominent merchants were of British birth, holding close relations with their kindred in the old country, and hoped to guide and control the movement by participating in it. Many sincere friends of government had been placed on the committee. Indeed, Jones, the Tory historian, claims that they formed the majority of its members.

The willingness to serve of those selected having been ascertained, an additional name was added, and the appointment of the whole confirmed at a meeting held three days later. Four days after this, Jay, Lowe, McDougal, and Duane, who had been deputed for the purpose, reported to the main body the draught of a reply to the official letter which had been received from the Boston Committee of Correspondence. This paper, which was from Jay's pen, said, "The cause concerns the whole continent, and we can see no remedy unless it proceeds from the joint act and approbation of all. We therefore conclude that a congress of deputies from the colonies in general is of the utmost moment, and that it ought to be held without delay."

This assembling in a common Parliament marks the beginning of a new era in American history, and it has been a fruitful subject of discussion to whom the honor of having suggested the measure is due. There can be no doubt, however, that the idea was in the minds of all. Sam Adams had favored the plan the year before; and a letter from Arthur Lee, then in London, recommending a meeting, was already written, and on its way to America. The problem confronting them was too intricate for any one of the colonies to solve. Æsop's fable of the bundle of twigs was patent, and a danger which threatened all would naturally induce them to seek

safety in mutual support. Besides, a partial congress had been successfully tried before; and what was more likely than that they should again come together, and present an undivided front to their enemies abroad.

Virginia declares herself to have been the parent of the measure, as her dissolved House of Burgesses had urged an agreement among the colonies to consider the best means of resisting the acts of the ministry; while New York rests her claim upon the reply of Jay's committee, to which reference has been made. Neither of them, however, is entitled to the distinction. Its advisability was first publicly suggested at a town-meeting held at Providence on May 17, soon after the news of the Port Bill had been received, when the deputies from that place were requested to use their influence in the General Assembly to promote a congress "for establishing the firmest union." This movement was followed, four days later, by the important city of Philadelphia. When replying to the Boston letter, her merchants said that the means of securing redress seemed to rest between non-importation, as had been proposed, and a general congress of deputies; and added, they had reason to think "the latter would be the most agreeable to the people of the province." The New York and Virginia committees took simultaneous action, as we have seen, on May 23; but

there is no reason to suppose that the proceedings of any one of the four were known to the others at the time, nor that their own were affected thereby.

The ministerial blow had been aimed at Massachusetts; and so far, the quarrel was mainly confined within her borders. It was, therefore, not proper for her to apply for assistance; but she gladly welcomed the proposal when spontaneously made, and, with the cordial approval of her neighbors, fixed upon the city of Philadelphia as the place, and the beginning of autumn as the time, for the meeting. Upon the New-York committee, as the only organization in the province antagonistic to the measures of the ministry, the important duty of selecting delegates seemed to rest. This was performed on July 4, by the nomination of Philip Livingston, Lowe, Alsop, Jay, and Duane, — three merchants and two lawyers. The first named was wealthy, and, in the language of Adams, "a downright, straightforward man;" a bold, determined patriot, who died at his post the year after affixing his signature to the charter of American freedom. Duane and Jay were both members of Congress when the Declaration of Independence was issued; but, less fortunate than their colleagues, they were, at the time, in attendance upon the New-York convention, and were thereby deprived of the honor of attaching their names to that instrument. Lowe rather sympathized with

Parliament; while Alsop — one of those patriots unable to bear the thought of a separation — withdrew, on the passage of the Declaration, to his estate near the city, and afterward became a refugee in England. The two lawyers were strong Episcopalians, and the Tory leaders fancied that their religious sentiments would induce them to lean toward the mother country.

The affairs of the city at that period were very much controlled by the merchants, who considered themselves capable of governing without interference, and had, so far, been permitted to manage the trouble with England. A democratic spirit was, however, abroad, which had begun to contest their supremacy. To a complaint against the recent proceedings, their adherents replied, "The gentlemen appointed on the committee of fifty are of the body of merchants, men of property, probity, and understanding, whose zeal for the public good cannot be doubted, and whose situations point them out as the proper persons to hold so important a trust." The mechanics had become a numerous body, and were rapidly rising into prominence. They, too, had their trade organization, were more uniformly opposed to the ministerial measures than the merchants, and, should the dispute with England result in hostilities, a large share of the burden would necessarily rest upon their shoulders. Under these

circumstances, they naturally thought they should have been consulted in the choice of delegates to the intended congress.

There was still another body of Whigs in the city, styling themselves "Sons of Liberty." They had been especially active during the troubles arising from the Stamp Act, and were re-organized upon the news of the Port Bill, denouncing it through the streets as barbarous; and, their passion being roused, they were prepared to carry out by violence any course suggested against the Government. Of these, Alexander McDougal, a Scotchman, was accounted the principal spokesman and leader; and it may have been with the view of placating this turbulent element that he was nominated by "the gentlemen merchants" upon their committee. He was an energetic, fearless, and determined man, had been recently imprisoned for a libellous hand-bill reflecting on the authorities, and was disposed to drive matters to extremity. He probably thought, could some one of the five be displaced, he might, by the aid of those whom he controlled, secure the position for himself. He accordingly proposed to the merchants that the names of the congressional delegates should be submitted to the mechanics for their approval, and afterward placed before the freeholders of the city for confirmation. That highly respectable and dignified body thought themselves quite as capable of mana-

ging political as commercial affairs, and, failing to see the propriety of submitting their action to the approval of others, rejected the motion. McDougal thereupon withdrew from the committee, with some of his supporters, and called what was long known as the famous meeting in the fields, to protest against the selection that had been made, and to substitute others more nearly representing his own opinions. His objection did not lie against either Jay or Duane, as he had served with them, and was well aware of their devotion to the country's interests.

At the meeting, a strenuous effort was made to form a party, and carry the election. The people were warned to beware of the merchants' committee, and exhorted to imitate Boston in supporting non-importation. The condition of the patriot affairs had become critical, as any division among the Whigs in the face of the numerous friends of Government would of necessity prove disastrous to their cause. "The young West Indian," Alexander Hamilton, a stripling of seventeen years of age, divining the danger, appeared unexpectedly, and by his persuasive eloquence induced those present to refrain from the extreme acts intended. Their resolutions inveighed against the Port Bill, declared the shutting up of any harbors to be unconstitutional, that an attack upon the liberties of any one of the colonies was an attack upon all, and pledged themselves to

abide by all measures of Congress. Though oil had been poured upon the troubled waters, the swell did not immediately subside. In the merchants' committee room, the next morning, this irregular meeting was condemned, and the conduct of McDougal and his followers commented upon with severity, as calculated to arouse jealousy, and lead to dissension. On the other side, a delegation from the mechanics addressed the nominees, requesting a statement of their opinion as to the proper course to be pursued at Philadelphia, declaring, should the reply not prove satisfactory, they had candidates of their own whom they were prepared to substitute. Without committing themselves to any definite procedure, those gentlemen responded that they would, at the coming conference, endeavor, to the utmost of their ability, to put into execution any measures that might be thought conducive to the general welfare of the colonies.

The meeting in the fields, nevertheless, had a decided influence upon the merchants; for, while condemning it, they recognized the danger to be incurred from divided pretensions, and proposed that a committee from their own body, with one from the mechanics, should canvass the taxpayers of the city, with a view of learning their opinion of the lists of delegates to be submitted to them. This scheme not proving satisfactory, a vote was taken at a meet-

ing held at the City Hall, when the selection already made by the merchants was approved. The nominees evidently thought, that, in a matter of such great moment, all interests should be united; and the following morning a majority of them appeared in a card declining to consider themselves properly chosen, as the late meeting had been summoned for a different purpose, and sufficient notice had not been given of its intended action. This seemed, for the time being, to throw every thing into confusion; but it resulted in the merchants yielding their claim to the sole control of political affairs in the city. It was finally determined to open a poll for the taxpayers in each ward, under the supervision of a joint committee of the two bodies; and the five delegates already named were then unanimously elected. The right of all classes to participate in affairs being admitted, entire harmony prevailed in the future; and the action of New-York City soon became as democratic as that of Boston.

Three members from other sections of the province subsequently united with those from the city, making in all eight representatives in the General Congress. Jay joined his father-in-law at Elizabethtown, and proceeded with him to Philadelphia. The other city delegates left New York in a body, escorted to the riverside by a large number of personal friends and sympathizers.

VI.

THE CONGRESS OF 1774.

AT the time appointed, the members of this notable assembly came together in Philadelphia from each of the thirteen colonies, except Georgia. England had furnished the example by her convention of 1688, which meeting, without legal summons, decided upon the constitutional powers of the Government. Most of the delegates, on the present occasion, were personally strangers to each other. The reputation of some as ardent patriots, and able advocates of American rights, had extended beyond the bounds of their own provinces, and was not unknown to their fellow-members; but the desires, purposes, and feelings of the greater number were to be ascertained and harmonized. John Adams, from the time of his appointment, had, with unwonted tact, been indefatigable in his endeavors to accomplish this among the more Northern ones, and, since his arrival, had sought to learn how far the Southern heart beat responsive to the patriotic pulsations nearer home. As he wrote, "Here is a diversity of

religions, educations, manners, interests, such as it would seem impossible to unite." Few slaves were found north of Maryland, which rendered the sections different in their habits of life, manners, and general character. Would the representatives from the two cordially agree? Upon their unity every thing depended. A sense of the injustice of England, however, pervaded both.

The proposal of a congress had met with general approval, and its members were hospitably entertained by the citizens of Philadelphia. They convened for the transaction of business in an unadorned building tendered by the carpenters of the city. Out of compliment to the important Province of Virginia, the presidency was conferred on Peyton Randolph, the speaker of her House of Burgesses. He was a distinguished lawyer, had formerly been attorney-general, and possessed great popularity at home. Charles Thomson was appointed secretary. Happy in the present, and not dreaming of the immortality in store for his name, he was roaming along the street with his bride when summoned to this new duty, and was taken at once to the hall, and inducted into office. He says, that, as he walked up the aisle, deep thought and solemn anxiety were observable on every countenance. The members were without precedent to guide them. They were neither an executive government nor a legislature.

Their sole power was one of advice, yet they exercised greater authority than was ever intrusted to any deliberative body.

America has never witnessed a gathering of men of more marked ability, moral worth, dignity, and weight of character, nor one more fully alive to the grave duties imposed upon it, and the heavy responsibility attending their proper performance; and never was so important a trust executed with more general satisfaction. With perhaps two exceptions, all of the delegates were native born. A large number were college graduates, and had been unhesitatingly accepted as leaders by the people. All conditions of society were represented; wealth and labor sat side by side; the plain man and the cultured took counsel together, for the questions at issue concerned all alike. Chatham told Franklin that it was the most honorable assembly since the times of Greece and Rome. Massachusetts had sent her two Adamses; Connecticut, her Sherman; Maryland, her Chase and Paca; Carolina, her Rutledges; while Virginia, besides her Henry and Lee, gave that incomparable man, the soldier and statesman, destined soon to bear —

> "On shoulders immense, Atlantean,
> A burthen well-nigh not to be borne."

Jay was at that time twenty-nine years of age. His eminent talents and exalted patriotism were

recognized at home, and his name was somewhat known in Philadelphia. Though perhaps the youngest member of this dignified and able body, he assumed a full share of its labors, and proved himself no unworthy representative of the imperial Province of New York.

Owing to the solemnity of the occasion, profound silence reigned after its organization, to be broken by the impassioned declamation of Patrick Henry, who, depicting the wrongs of the colonies, scouted the idea of sectional distinctions, exclaiming, "I am not a Virginian, but an American," thus giving utterance to his country's aspiration for nationality. This revolutionary doctrine startled the more conservative members. Jay thought that all government in America was not yet at an end, that the measure of arbitrary power was not full, and that it ought to run over before a new constitution should be formed. Following in the same line as Henry, Samuel Adams, a strong Congregationalist, arose, and moved that a clergyman of the Church of England might be requested to open the succeeding sessions with prayer.

Our readers will remember an engraving entitled "The First Prayer in Congress." At the desk, arrayed in the vestments of his sacred office, is seen the Rev. Mr. Duché; while grouped around are Presbyterian and Quaker, Baptist and Episcopalian, —

the difference in creed forgotten, — joining in supplication to the Most High to enlighten them, and guide them to the restoration of harmony with the mother country. None of them, save, perhaps, that veritable tribune of the people, Samuel Adams, as yet looked forward to a separation ; but the conduct of the King and Ministry in less than two years precipitated the colonies into independence.

For obvious reasons, Congress sat with closed doors ; and, unfortunately, no record was preserved of measures which failed of its approval, nor of remarks made from time to time. Hence, for a knowledge of its proceedings, we are compelled to rely upon the papers that it spread before the world, aided by the scanty reminiscences of some of the more important actors on the scene. It is known, however, that a spirit of concord reigned over its counsels, that unity prevailed ; and all prejudices, if entertained, were, for the time, made to give place to questions concerning the general welfare.

No limit had been fixed to the number of delegates from each colony, and the larger ones claimed a proportionate weight ; but, as no trustworthy estimate of their wealth and population could be obtained, it was agreed that all should possess an equal vote. Here, perhaps, we may detect the germ of what is more fully developed in the present Constitution. The Congress itself professed to voice the sentiment

of the people; and having admitted the equal right of the colonies, *as such*, we recognize in it the future Senate and House of Representatives. Virginia had instructed her delegates not to go beyond the then existing reign in stating their grievances; and, as this policy met the approval of those from Maryland and North Carolina, all confined themselves to practical issues, and, unlike the French National Assembly, forbore to enter upon the wide and boundless field of theoretical and abstract rights.

After an interchange of views, they resolved upon the course proper to be pursued. It was deemed advisable first to demonstrate to the world the absolute justice of their cause, thereby uniting America, and conciliating the friends of constitutional liberty in England; in the second place, to endeavor to obtain relief by carrying an humble petition to the foot of the throne. They next determined to appeal to the interest of their fellow-subjects at home, and, in order to render this more effective, to suspend all commercial intercourse with them until the cause of the troubles should have been removed. In furtherance of the first measure, two papers were agreed upon. In the one, the people represented in Congress were exhorted to bear their present trials with firmness, and hold themselves in readiness for future contingencies. The other was an address to the unrepresented colonists, asking their concurrence, and soliciting their assistance.

These various subjects were placed in charge of appropriate committees, which in every case included some of the ablest delegates in attendance. The one to whom the first was referred, prepared a summary of the rights of the people of America, and specified the different enactments infringing them. It was understood to be the production of several hands, and eloquently, logically, and unanswerably covered the entire questions at issue. The rights asserted were those which had before been enjoyed unquestioned, — life, liberty, the possession of property, and the privilege of assembling for the discussion of public affairs; in addition to these the concessions which had been made by the charters, together with the benefit of the common law of England, and such statutes as were in force at the time the colonies were planted. Then followed an enumeration of the various instances in which these rights had been violated by Parliament, and a demand for the repeal of its Acts as essential to the restoration of harmony between the countries. By the publication of such a document, Congress laid aside its provincial character, and, as the representative of the whole country, assumed a national attitude before the world.

The proceeding next in importance was an address to the people of Great Britain, and the task of preparing it was intrusted to Jay. Impressed with the seriousness of the undertaking, and realizing that it

required the utmost exertion of his youthful powers, he left his lodgings, barred himself in a room, and there composed that paper which Jefferson, without knowing the author, declared came from the first pen in America, and which was regarded by Webster as "standing at the head of the incomparable productions of the first Congress." "It would be difficult," says a profound critic, "to select from them one better adapted by the choice and illustration of its topics to the purpose for which it was designed, or one more remarkable for its fervid and manly eloquence." In terse and glowing language, it called upon the English people to witness their loyalty and attachment, and their willingness to contribute to the common defence of the empire; claimed that none of the rights of freemen had been forfeited by emigration; pointed out the wrongs sustained; the violent invasions of the cherished principles of constitutional government; and invoked them, as they valued their own liberties, to refrain from trespassing upon those of their fellow-subjects.[1] It at once established the reputation of the writer, and gave him an ascendency which he never afterwards lost.

The petition to the king was drawn by Dickinson, who, after reviewing the recent enactments of Parliament, declared that their bare recital justified his

[1] See Appendix A.

subjects in flying to the foot of the throne of the sovereign, and asking his interposition in their behalf.

A protest was also made against having a standing army quartered in America, the closing of Boston Harbor, and the bill legalizing the Catholic religion in the Province of Canada. Inspired by a spirit of freedom, the members further resolved not to be concerned in the slave-trade after the following December, nor to hire vessels, or sell supplies, for that purpose. Commercial non-intercourse was to be established until England should have withdrawn her illegal pretensions, and the appointment of committees at the different ports was recommended for its enforcement.

Public interest throughout the country had been quickened by the meeting of Congress; and the result of its deliberations was looked for with impatience by both friend and adversary, — the former with apprehension lest discord should arise, or improper measures be recommended; the latter fervently hoping that either or both might prove the case, — the timid fearing that its expression of feeling would be pitched too high; the ardent dreading that hesitating counsels might prevail. When, however, at the close, its proceedings were made known to an expectant world, all were surprised at the sound judgment, dignity, and moderation, which, in general, marked its action. It had unknowingly performed a

great work. The papers emanating from it were highly commended for their ability and research, eliciting marked consideration from distinguished persons at home and abroad. Their solemnity and firmness of tone, combined with an evident desire to heal the breach, won for Congress the support and confidence of the thoughtful and discreet. The Whigs gave them a cordial approval, and the Tories could only find fault with the non-importation policy recommended. To form a correct estimate of them, they must be contrasted with the record made, not many years later, by the French Assembly and Convention. Chatham wrote, "I have not words to express my satisfaction that the Congress has conducted this most arduous and delicate business with such manly wisdom and resolution."

The documents issued were well calculated to arrest attention, and, while uniting the colonies in opposition to ministerial pretensions, were, at the same time, not unsuccessful in influencing public opinion in England. The ministry had heretofore been sustained by all classes in that country. Now, when the arbitrary and unconstitutional nature of its measures was demonstrated; the king assured, in impressive language, that resistance would follow their enforcement; and his justice invoked, — the public might well question the wisdom of their past course, and hesitate as to its continuance. The papers,

when laid before Parliament, furnished Chatham with an occasion for expressing this feeling, which, spreading abroad, so strengthened the Whigs, that the King and Ministry had, in a few years, to succumb to the general conviction, that the principles for which the Americans were contending, were those which had a century before deprived the Stuarts of their heritage, and placed the House of Hanover upon the English throne.

Swift had, in the previous century, recommended non-intercourse to Ireland; but, judged by subsequent developments, the expediency of America's adopting it may well be doubted. Its efficiency in a former instance was unquestioned, and she anticipated a period of commercial restriction rather than a long and disastrous war. Still, the condition of affairs was changed. Trade between the countries was already languishing, and its entire suspension was particularly injurious to the interests of their supporters abroad. When hostilities began the following year, the colonies were without the necessary supplies, which might have been secured for the emergency had trade continued unobstructed.

Parliament had enacted the Quebec bill as an inimical measure, yet its condemnation was an unworthy appeal to popular prejudice by those striving for the preservation of their own freedom in State and Church. They must later have been made pain-

fully aware of the impolicy of their course, when, in a few months, the Carrolls, with Chase and Franklin, were sent to Canada for the purpose of encouraging adherents, and allaying the hard feeling entertained by the Catholics toward their Protestant brethren across the border.

After remaining in session fifty-two days, Congress finally adjourned. Before doing so, they, with sagacious foresight, provided for another meeting the following May. Such were some of the proceedings of this august body of patriots, who now sought their homes to diffuse among their neighbors the same fervid and fearless spirit by which they themselves were animated. The sword yet slumbered in the scabbard!

VII.

THE CONGRESS OF 1775.

WHEN Jay first went to Philadelphia, he was scarcely known outside of his own province, and had little weight therein. While surpassing its other delegates in every thing but years, it seemed then unlikely that he would exercise any marked influence over the proceedings of Congress. The patriotism, ability, tact, and mature wisdom displayed by him in that assembly, had, however, won the confidence and respect of his fellow-members; and he retired from it with a wide-spread reputation, and was recognized as a destined leader of the people of New York in their further contest with arbitrary power.

The statesmanlike papers emanating from Congress were expected to operate silently upon public opinion; but, in order to render non-importation effective, the most energetic and efficient action was necessary on the part of the several committees intrusted with its enforcement. Whatever may have been Jay's views as to this policy, he resolved to carry it out to the fullest extent, and in accordance

therewith to hold up to public odium all persons guilty of its violation.

On his return home, he entered upon this unpleasant task, which was made the more disagreeable by the fact that his committee of fifty-one had been appointed for a specific and very different purpose. The difficulty soon became apparent. The city was already the seat of considerable commerce, and many of its leading merchants were inimical to a measure which would dry up a stream of wealth that had heretofore flowed in upon them. As late as the previous June, they had expressed their disapproval of such proceedings, and were supported in their opposition by the governor of the Province, together with a large number of its landed proprietors. The presence of a small military and naval force further strengthened their determination to disregard the congressional requirements.

The committee, finding themselves inadequate to the new duties imposed upon them, called to their assistance the citizens generally, who, at their suggestion, replaced them in May by another body consisting of one hundred members. Jay was of the number, and, in conjunction with Duane, is supposed to have prepared its articles of association. The powers conferred upon it were undefined, and practically embraced all subjects concerning the public welfare, but were most justly and gently exercised.

The old committee had carried on an extensive correspondence with patriotic organizations throughout the colonies, and this duty now devolved upon its successor. Representing, as the latter did, every class of the community, it soon evinced, by its energy, the new spirit infused into it. All were called upon to arm, and perfect themselves in military discipline. Patrols were established, supplies for the British troops at Boston inhibited, vessels watched, to prevent their discharging goods, the reshipment of those improperly landed required, and enemies of the cause held up to public indignation. The people of the city appeared to have assumed sovereignty, and delegated all authority, except that of taxation, to this irresponsible "committee of observation." Its vigorous proceedings, even if they did not crush out opposition, prevented any open expression of dissent on the part of the Loyalists, thereby strengthening the popular cause in other sections of the Province. A letter, prepared by Jay, was addressed to the Mayor and Livery of London, recapitulating American grievances, and asserting that all the horrors of civil war would never compel the country to submit to parliamentary taxation.

The Whig merchants of the city were roused, and, emulating their brethren of Boston, boarded a vessel just from England, and emptied into the river eighteen chests of tea which they found on board.

The time was now at hand when Congress was again to meet. The Government abroad dreaded any approach towards a union of the colonies; and the different executives had been instructed "to prevent the selection of delegates to a new congress, and to exhort all persons to absent themselves, as it cannot but be highly displeasing to the king." [1]

Their efforts, however, failed of effect. The former mode of electing delegates in New-York City was irregular, and there had been but a partial representation at Philadelphia from other parts of the Province. The committee of one hundred, therefore, as the recognized Whig authority, recommended that deputies should be chosen from the different counties, to assemble in April for that especial purpose. The friends of the ministry, on this occasion, rallied to defeat the movement in the city. They afterwards affirmed that the election was marked by riot and disorder. Judge Jones says that the Loyalists, numbering three-fourths of the legal voters, marched in a body to the polls; but their adversaries, having collected boys, unemployed sailors, and negroes, threatened all who opposed them. The

[1] Dunmore in Virginia was indiscreet enough to issue a proclamation, saying, "*I am commanded by the king*, and I do accordingly require all magistrates and other officers to use their utmost endeavor to prevent any such appointment of deputies, and to exhort all persons whatever within this government to desist from such an unjustifiable proceeding so highly displeasing to his majesty."

majority of the ballots cast was largely in favor of sending the late members of Congress to represent the city at Albany. The committee itself were not satisfied with the manner of conducting the election, and at Jay's suggestion set it aside, and held one confined to the freemen and freeholders, when the previous selection was unanimously ratified. The convention came together on April 20, and remained in session four days. It testified its approbation of the conduct of the former delegates to Philadelphia by re-appointing all except Lowe, who, at his own request, was excused from further service. With them were now associated Clinton, Lewis Morris, Schuyler, R. R. Livingston, and Francis Lewis.

The Whigs in the Assembly had failed in an attempt to pass a vote approving of the proceedings of the recent Congress, and were equally unsuccessful in having delegates sent to the one to be held the following May. The landed property in the other colonies was generally diffused, and formed a stable foundation on which to build liberal institutions; while in New York it was centred in the hands of a few who were thereby allied in feeling to the aristocracy of the mother country; and the Assembly, by their influence, became the supporter of her pretensions. Resolutions passed by it, approving the course of the ministers, gave great satisfaction abroad; while at home they were regarded as a desertion of the

cause of America. The authorities became alarmed at the situation of affairs, and ordered Tryon to return, and make any reasonable concession to the public demand. Had that governor been present, his ability, energy, and popularity would have gone far to sustain the king's supremacy. He was at the time in England on leave of absence; and the executive duties of the Province had, in consequence, devolved upon the aged Colden, a loyal and honorable man, but wholly unable to counteract the aggressive and vigorous measures of the patriot leaders. He could offer little more than a passive resistance, and, in despair, wrote to Dartmouth early in May, "The people have entirely prostrated the power of government." With the news of independence, the inhabitants of the city, breaking through all restraint, seized the military stores, and, dragging the king's statue from its pedestal at Bowling Green, melted it into bullets with which to kill his troops.

In view of the disturbed condition of affairs, Jay's committee prepared articles of association, pledging the signers, under all ties of religion, honor, and love of country, to repel every attempt by Parliament to enforce taxation. As it had become evident that the Assembly was not in accord with the prevailing sentiment, they also took the bold resolution of calling upon all voters in the Province to elect deputies to a provincial congress. This having been carried into

effect, that body was installed in New-York City the latter part of May. As the chosen representatives of the people, it assumed the entire jurisdiction heretofore exercised by the governor and legislature. The last regular Assembly, under the authority of the Crown, had been held early in April, when separate petitions were sent to the King, Lords, and Commons. Soon after this, Colden took up his residence on board a ship belonging to his majesty, where from time to time the loyal members met to issue impotent enactments against popular sovereignty.

When Congress next met at Philadelphia, in what is now known as the State House, its more advanced members seemed imbued with the same determined spirit that marked the opening of the Long Parliament. The sound of musketry on Lexington Green had not yet died away, and their patriotic pulsation appeared to have been quickened by its reverberation. They felt that peaceful measures to check the current of tyrannical proceedings had been exhausted, and that nothing remained but to throw off allegiance, and submit the question of independence to the arbitrament of the sword. Hostile forces confronted each other at Boston. The king had received their late petition with contemptuous indifference. Their courage had been ridiculed — an officer of rank, who had served in America, having expressed the opinion in the House, that with five

regiments he could march through the entire country. This arrogant speech had met with applause at a time when Chatham's conciliatory proposals were rejected with scorn. A cordial reconciliation with England on terms honorable to their country seemed to them to have become impossible.

While all of the members were actuated by the same lofty patriotism, and evinced a firm determination to maintain their liberties by force of arms, if necessary, the larger number hesitated to take the decisive step of independence, and restrained their more impetuous brethren. Some, inspired by their hopes, were still willing to confide in the justice and magnanimity of the authorities: others, like Dickinson, were "afraid of breaking the line of opposition by advancing too hastily." They realized, that, in such a movement, all the traditions and social influences of Europe would be against them, and they knew that many of the colonies were not yet ready for a separation. The older and the more circumpect members perhaps felt that it was necessary to demonstrate to the people that no means had been left untried to settle the dispute amicably, and they may also have thought that the course of the British Government would eventually render a division of the countries inevitable, and thus reconcile all to the idea of independence. Washington and Jay might for some time longer be classed among these.

Few changes had been made in the body, the most notable being Pennsylvania's appointment of Franklin upon his arrival from Europe. The same president and secretary were elected as before. Hancock, the speaker of the Massachusetts Provincial Congress, made his appearance as a delegate for the first time, and, when Randolph left to preside over the Virginia House of Burgesses, was chosen as his successor. With a modesty not unnatural, he hesitated to occupy the seat, when jovial Ben Harrison, who was standing near, seized the new officer in his athletic arms, and, placing him in the chair, exclaimed, "We will show Mother Britain how little we care for her, by making a person president whom she has excluded from pardon." Randolph's seat in the delegation was filled in June by Jefferson, then a tall, raw-boned youth, with sandy hair and gray eyes, a few months older than Jay. Though unable to address an assembly, he brought with him a well-established reputation as a vigorous and polished writer; and his fame was destined ere long to marvellously increase.

The divergence in views above referred to, caused in the beginning some indecision. Hostilities had already begun, and the army under Gage was beleaguered in Boston. A formidable British armament was expected at New York; and the provincial

authorities, having sought information as to the course to be pursued upon its arrival, were recommended not to permit the raising of any intrenchments, and to repel force by force. The General Congress was not, however, prepared to advise that the landing of the enemy should be resisted, or an attack made upon them, even though their hostile intention might be manifest. On the 18th of May, three days after this halting reply, the taking of Ticonderoga and Crown Point with their stores was reported. Here was a clear case of aggressive warfare on the part of the Americans. The king's forts were captured, munitions seized, and his troops made prisoners. This was high treason on the part of Allen, unless the responsibility were assumed by Congress, which was reluctant to sanction the act, but was not willing to disavow it by surrendering the property, and releasing the prisoners. Events, however, rapidly brought a decision. Even before Bunker Hill had roused the country, hesitation was no longer displayed in making ready for the final arbitrament. A week after the news from Ticonderoga was received, it was unanimously resolved, that as Gage, the British commander, had commenced hostilities, the colonies should be put in a state of defence, and the New-England troops arrayed before Boston adopted as the Continental Army. Privateering against English commerce was

authorized, the American ports thrown open to the world, and the last vestige of dependence effaced.

On June 15 the fortunate appointment of a commander-in-chief was made. Washington, as we have seen, was a delegate to the first Congress; and Patrick Henry declared, that, while others surpassed him in eloquence, he was unquestionably the greatest man on the floor. He had been re-elected by Virginia; and, in deference to his experience, the task was assigned him of preparing regulations for the government of the army, and of presiding over all committees on military affairs. No fact more strikingly illustrates the sagacity of his associates than his unanimous election by ballot as the leader of their forces in the approaching conflict. Only by "the Conway Cabal" and its sympathizers was its wisdom ever questioned; and to his sound judgment, unaffected modesty, dignity, and firmness of character, America was indebted for the harmony which prevailed in all branches of service during the Revolution, and the entire subordination of the military to the civil authority. It was mainly upon his suggestion that many of the general officers were chosen to aid in the arduous work to be performed. He thenceforth moved before his countrymen a cloud by day, and a pillar of fire by night. The number of important committees on which Jay was appointed indicates the reputation which he had acquired the

year before, and this was still further increased by the able documents emanating from his pen. The decisions of a committee only are known. Its labors are unseen, and of these he bore more than his proportionate share.

A closer union of the colonies had always been a favorite idea with the sagacious Franklin, who, accordingly, laid before Congress a plan of confederation. Such a movement was, however, too advanced for the majority of the members, who looked upon it as simply proposing independence without mentioning the word.

A second petition to the king was signed individually. When it was suggested early in the session, it was objected that the manner in which the first had been received forbade another approach to the throne: but Jay insisted, that, if the people were called upon to take up arms, it must be shown them that no proper effort had been spared to avert the necessity; and he was accustomed in after-life to speak of the auspicious influence of the second appeal, attributing this to the fact that its rejection left no alternative but resistance. The measure was conceded most unwillingly, but the members were still more adverse to any separate action of the kind on the part of the colonies. Learning that the Assembly of New Jersey, inspired by its Tory governor, contemplated petitioning his majesty, Jay,

Wythe, and Dickinson were deputed to visit that body, and urge the impropriety of the proceeding. The first two addressed it briefly, Wythe saying that Congress had already done so, and that it was now necessary to satisfy England that the Americans would fight. Jay declared that the country had nothing to expect from her justice or mercy; that petitions were no longer the mode, but unanimity and vigor the essential means, of procuring redress. Governor Franklin's purpose of separating New Jersey from the other colonies was thus defeated, and the result was a prorogation of the Assembly the following day.

Amid active preparation for hostilities, Congress was not unmindful of friends abroad who had shown sympathy with the cause. It issued an address to the people of Great Britain, and another to the Corporation of London. In the former, any desire for independence was disclaimed, and a willingness expressed to be bound by all Acts relating to navigation passed prior to the close of the Seven Years' War; but at the same time a determination was avowed to resist all further encroachments on colonial rights. In the second address, the city was thanked for the interest it had before manifested, and a continuance of its good offices solicited. Nor were Jamaica and Ireland overlooked. The latter had seized the opportunity to extort concessions from the Imperial Gov-

ernment, and her threatening attitude had detained troops which would otherwise have reached America at a critical moment. In addressing her people, Jay said, "Blessed with an indissoluble union, with a variety of internal resources, with a firm reliance on the justice of the Supreme Disposer of all human events, we have no doubt of rising superior to all the machinations of evil and abandoned ministers. . . . Accept our most grateful acknowledgments for the friendly disposition you have always shown toward us. . . . We should be wanting to ourselves, we should be perfidious to posterity, we should be unworthy of that ancestry from which we claim our descent, should we submit with folded arms to military butchery and depredation to gratify the lordly ambition, or sate the avarice, of a British minister. For the defence of our persons and properties we have taken up arms. When that violence shall be removed, and hostilities cease on the part of the aggressors, they shall cease on our part also."

Every arrangement having been made for the coming struggle, Congress published to the world a declaration of the causes and necessity of taking up arms. Dickinson and Jay were both on the committee which prepared this admirable document, though it is understood to be from the pen of the former. In it he said, that the arms which they had been compelled by their enemies to assume, they would, in

defiance of every hazard, employ for the preservation of their liberties, being with one mind resolved to die freemen rather than live slaves. He declared further, "We have counted the cost of this contest, and find nothing so dreadful as voluntary slavery. Our cause is just, our union perfect, our resources great, and foreign assistance is undoubtedly attainable."

Having perfected all measures deemed requisite for the occasion, Congress appointed a day of fasting and prayer, to invoke the divine blessing upon their suffering country. They had been in session for eighty days, occupied with weighty duties, when, owing to the heat, and their inability to proceed without awaiting further developments, they invested a committee with essential powers, and adjourned, to meet again in September.

VIII.

INDEPENDENCE.

WHEN Congress assembled at the appointed time, the effect of its late action upon the King, Ministry, and Parliament had become known. No conciliatory steps had been taken by any of them, and their proceedings all indicated a settled determination to reduce the colonies to unconditional submission by the iron hand of military power. The petition to the king was a last effort to heal the breach; and on its failure, Jay felt that nothing more could be hoped for from the authorities abroad, and was thenceforward in full accord with those advocating an immediate separation.

Troops had been hired in Germany; and an imposing land and naval force, under the command of the brothers Howe, was being concentrated for the subjection of the associated colonies. Every preparation within the scope of the limited powers of Congress had already been made to meet the emergency, and its further duties were, for the time being, merely executive. It called upon the prov-

inces open to invasion for additional troops, ordered the erection of fortifications at exposed points, recommended the securing and removal to the interior of all persons actively inimical to the American cause, and, thus occupied with details properly belonging to subordinate civil officers, could only await the threatened event with calmness and resolution.

When Dickinson declared that foreign assistance was undoubtedly obtainable, he little dreamed that his prediction would so soon be fulfilled. In November he was appointed on a secret committee, with Franklin, Jay, and two others, to correspond with friends of the cause abroad. Arthur Lee was then in London; and Franklin at once wrote to him, as well as to Dumas at the Hague, to sound the ministers of France and other sympathizing powers, and learn what encouragement and aid might be expected in the event of a separation from the mother country. His letters had hardly been despatched, when a meeting was called at night, to which the members proceeded by different routes, in order to escape observation. Sieur Bonvouloir, who had been employed by the French ambassador at London, made his appearance as a well-disposed individual having some useful acquaintances at Paris. He did not exhibit any papers, and was very guarded in his expressions, but intimated that France would shut her eyes to the purchase and shipment of warlike stores,

said he could select good agents for them in that country, and warned them against sending a plenipotentiary, as whatever happened in Paris was immediately known in London. He seemed impressed with the prudence of the committee, and wrote to his employer, "The sound heads who compose the select council are acting discreetly." Such were the first overtures which France and America almost simultaneously made to each other.

We are apt to conceive of the Continental Congress as resembling in constitution an American Congress of the present day, endowed with full legislative authority, having its duties plainly set forth, and its powers carefully defined. Such a conception is entirely fallacious. It could only recommend, not legislate. It was simply a grand committee, organized for mutual support, and protection against the enemy, and its influence was dependent upon the wisdom of its proceedings. Keeping this knowledge steadily before them, the members moved cautiously, but still forward, being always well abreast with public sentiment, if not somewhat in advance of it.

The progress of the quarrel had stimulated the people to assume an attitude towards the supreme government which could be justified only by a further movement in the same direction. The king's authority in many places had been thrown off; his officials superseded or punished for enforcing the

laws of Parliament, and open warfare waged against his armies: yet allegiance was held to be due a sovereign thus contemned, and justice was professedly administered in his name. The bonds which held society together were loosened at every point, and it was sustained only by general forbearance. The Anglo-Saxon reverence for the forms of law was too deeply embedded in the nature of the people for this condition of things to last.

With the beginning of the new year, the advisability of a formal separation from England began to be discussed in all circles. American trade had been thrown open to every nation; and, undeterred by the threatened invasion, public opinion rapidly tended toward independence. As yet, in some sections, its approach aroused grave apprehension; and Congress therefore proceeded with caution to a consummation which the majority at last realized to be inevitable. In the previous November, New Jersey had expressed her "detestation of such opinions," the "extreme abhorrence of such sentiments," and directed her delegates "to utterly reject any proposition of the kind." Maryland, in the January following, had instructed hers to entertain no proposal looking to a separation; while the important Province of Pennsylvania was equally opposed to such a movement.

On May 15, on the motion of John Adams, a reso-

lution was passed, recommending those colonies, "which have not already established suitable governments, to adopt such as will best conduce to the safety of their constituents and America in general." Its passage was regarded by the mover as virtual independence. In pursuance of this advice, the king's authority, where still existing, was stricken down, and the sovereign power thenceforth lodged with the inhabitants. One step further was necessary, and that speedily followed. Only nine days were permitted to elapse, before a committee was appointed, "to take the subject of independence into consideration." Mr. Lee's resolution, declaring the colonies free and independent States, was favorably reported, a day named for its discussion, and Jefferson, Franklin, Adams, Livingston, and Sherman were ordered to prepare a declaration suitable for the occasion. On June 10 the debate opened, and was conducted with animated feeling on both sides. The opposition was based almost exclusively upon the inexpediency of the measure at that juncture. Pennsylvania had seven delegates present, most of whom felt bound to regard the instructions heretofore given them, as did those from Maryland and New Jersey — the former being equally divided: the representatives from New York had received no directions upon the subject. Unanimity was essential in a matter of such great weight; and the majority was therefore con-

strained to prolong the discussion, and await the flood-tide of independence rolling in upon the country.

On June 21 New Jersey authorized her delegates, "if deemed necessary and expedient, to concur in the measure." Four days afterward, Pennsylvania took similar action, and was soon followed by Maryland. The New-York delegates, though unable to vote, assumed the responsibility of sanctioning it; while those from Delaware — before divided — gave it their approval. The ever memorable day in July witnessed all of the thirteen colonies, through chosen representatives, yielding their assent to that act which forever marks an epoch in the world's history, and has quickened the people of all nations to higher aspirations in the cause of freedom, and whose influence will doubtless be traced for many generations to come. The declaration was ordered to be engrossed on parchment; and on Aug. 2, having been laid before Congress, it was signed by the members generally. Some who had voted for it were absent on public business, while several affixed their names who were not present at the time of its adoption. The Howes, ere this, were at Staten Island with their armament; and Carleton, having expelled the Americans from Canada, was on Lake Champlain; yet Ellery, who placed himself by the side of the secretary, and eyed each delegate as he

approached, declares that he saw nothing but dauntless resolution on every countenance.

Turgot had supposed that the colonies would, like fruit when fully ripe, drop naturally from the parent stem; but the suspicions of the home authorities, and their contracted, illegal, and ungenerous treatment of their dependencies across the Atlantic, resulted in a premature separation of the countries. At the close of the Seven Years' War, England, intoxicated with military glory, had become haughty, supercilious, and domineering, forgetting that a portion of the same blood shed by the Ironsides at Marston and Naseby flowed in the veins of her progeny in the New World. Men in Britain had ceased to bend the knee to rank, but the power of the people had not yet become greater than that of the aristocracy. More than a century of training in local self-government had fitted the American people to assume entire control of their affairs.

When we revert to the condition of the colonies, weak, defenceless, without allies, and threatened by an overwhelming naval and military force, we are struck by their moral heroism, grandeur, and magnanimity in throwing down the gauntlet before a potent nation which had recently humbled the House of Bourbon.

A wrong impression is conveyed to the popular mind by speaking of America's assertion of inde-

pendence as a revolution. Burke pronounced it one prevented, and there was little about it partaking of a revolutionary character. While the French leaders sought to destroy all connection between their nation's present and its past, the Fathers of America, more wise, strove to rupture as few ties as possible. The principles of the common law were not impaired, and even its forms were held sacred. There was no subversion of the established order. The administration of public business in the new States retained its old methods, and justice was dispensed in the same manner as before. This so-called revolution, like that of England in 1688, was merely a change of dynasty to secure the liberty of the subject. They renounced their allegiance to the sovereign, not because he was a king, nor from a desire to improve the existing institutions, but because his measures tended to break down the safeguards which protected their inherent rights, privileges, and immunities. The object was to preserve these, and the legal system and framework of society remained essentially the same after it had been accomplished. Like the slender cord which connects the infant with its parent, the bond of allegiance once severed, each people has grown the stronger and more robust in an independent political sphere.

It is also a mistake to think that the cause of independence was unanimously sustained in the

colonies. In all of them, there was a large and influential minority opposed to a separation from the mother country. Many, who in the beginning were hostile to the measures of the ministry, shrunk back, and withdrew their support from Congress, when it became manifest that military force was requisite to maintain colonial rights. The rule of the home government had not been oppressive; it touched them at few points: and the question at issue was, in its earlier stages, as much one of abstract principle as the removal of a practical grievance. The revolution was started by the people in Massachusetts, and by the upper classes in Virginia.

The settlements made in America were confined to a narrow strip of territory, which, like a ribbon, bordered the Atlantic coast. Widely separated by almost impenetrable forests and rapid streams, and connected by few roads, their occupants held little intercourse, being as diversified in character as the size of the provinces, or the nationalities from which they sprung. Franklin at one time supposed that the jealousy existing among them would prevent their ever uniting. From England two classes had emigrated; the one settling in the East, where the farms were of limited extent, and poor, affording but a modest living to a frugal family, even when each member contributed his proportionate share of labor. Contending against a rugged climate, the inhabitants

grew hardy and self-reliant, asking no assistance from their neighbors except in cases of great emergency.

In Virginia, on the other hand, the land was held in large tracts, frequently entailed, and was worked by slaves, the proprietors living apart in a patriarchal manner. Regarding their fair complexion as a badge of freedom, they were aristocratic, high-spirited, and given to a generous hospitality. The same love of independence was fostered by isolation in the one case as by proximity in the other. All the settlers looked upon England with affection, and were bound to her by family and business ties, more numerous and intimate than those connecting them with each other. It was hardly to be expected that they would cast aside their religious, social, and colonial prejudices, and combine to overthrow by violence a government more liberal than was that of any other parent state, and one under whose protection they had heretofore enjoyed unexampled prosperity.

John Adams, "The Martin Luther of the Revolution," estimated that one-third of the colonists were opposed to a separation. The great number of refugees who accompanied Howe from Boston to Halifax, indicates that, in that hot-bed of rebellion, loyalty to the sovereign still burned in the bosoms of a large portion of the population. It is probable that more supporters of the king were to be found in the important Province of New York, where a

landed aristocracy existed, than in any other. General Greene thought that not more than one-third of the real estate was held by those who favored the American cause. The people in the interior districts recoiled from an armed conflict, and those dwelling on its long line of frontier dreaded the horrors of a savage inroad. Queens, one of the most populous of the rural counties, was almost unanimously opposed to the Whig proceedings, refused to hold elections when ordered by the patriots, and was finally placed beneath the ban of the State for its contumacy.

Virginia, under the leadership of her eminent sons, took an early and decided stand in support of constitutional principles, Maryland soon following her lead. Opposition to Congress largely prevailed in the Carolinas, where there had been an influx of emigrants from Scotland, who had been "out" in '45. Pitt had not been without success in his efforts to secure for the House of Hanover the adherents of the Young Pretender, who were now strenuous in upholding the arbitrary measures of those who had supplanted the Stuarts upon the throne of England. The ministry, disconcerted by the general resistance, were influenced by the advice of refugees, who, inspired by their hopes or personal interests, naturally misrepresented the condition of affairs.

In the early stages of the contest, wherever the British appeared, they were welcomed by friends, and furnished with needed supplies. These, however, soon refused to render them any open assistance, as, upon the withdrawal of the troops, they found themselves left without protection to the scorn of their neighbors, and the tender mercies of the authorities. When the character of the war was changed by Germaine, the sanguinary proceedings of the soldiers in some of the States drove friend and foe alike to arms. In fact, the failure of the British was largely due to the many Tories in the colonies. Remembering the great number of Americans who had participated in the French war, and relying upon their professions, the ministry at first supposed that it would require but a moderate European force to restore peace, as volunteers could be readily procured from the loyal classes. The result showed that comparatively few were willing to leave their families and comfortable homes to encounter the hardships of a soldier's life, for the purpose of sustaining a cause in which they had little direct concern. Of the small body of recruits obtained, the most efficient organizations were Ferguson's corps, demolished at King's Mountain, and Simcoe's celebrated rangers, who, from their knowledge of the country, alone proved very serviceable to the side on which they were enlisted.

In reviewing the events of this period, the student is impressed by the weakness which, with rare exceptions, characterized the different cabinets from the beginning of the trouble down to the close of the Revolution. To carry out the sovereign's wishes was the touchstone by which to retain office; and in consequence, statesmen of spirit and capacity were debarred his counsels, and driven into opposition. There was among them no commanding mind, like Chatham in his prime, to call into action the reserved strength of the nation. Second and third rate men filled the higher departments. Under the inspiration of the king, ministers had entered upon a system of measures, clearly unconstitutional, which they had been warned would meet with resistance; yet instead of being prepared to overcome this, or to recede from their designs, they acted throughout in a feeble and vacillating manner, forming plans with little consideration, and intrusting their execution to agents without capacity or enterprise. The situation demanded the highest order of military genius, yet the task of subduing the colonies was confided to commanders like Howe and Clinton.

In the beginning, some movement was made toward placing Lord Clive at the head of the army in America. Had this been carried into effect, there is little question that independence would have been postponed for many years. If that "heaven-born

general" had landed, as did Howe, at the head of thirty thousand well-appointed troops, he would never have permitted Washington to escape over East River after the victory of Long Island, nor have paused in the pursuit of his reduced and dispirited forces across the Jerseys. Philadelphia would have been captured at once, and the tide of disaster have remained unturned by the surprise at Trenton. The Americans had already been driven from Canada, and gloom prevailed everywhere. A crushing defeat at that time, before France had entered upon the scene, must have given a finishing stroke to the patriot cause. The States were not closely welded together. They were "still in the gristle, and not yet hardened into the bone of" nationality. Congress was a board of consultation, almost impotent for the exercise of sovereign functions, and did not dare provide a revenue, nor make a requisition upon its constituents, though its paper issues were daily becoming more and more discredited.

Under these circumstances, with the American troops dispersed, and New York and Philadelphia held by a small garrison, all the States south of New England could have been kept in subjection, and that section ultimately reduced. But with Howe as commander of the British, American independence was already achieved. Bunker Hill decided the contest. It had been sedulously asserted that the colo-

nist was timorous by nature, and would not encounter regulars. The bloody repulse, so unexpectedly sustained in his attempt to carry that redoubt, dispelled this illusion from Howe's mind, and taught him a lesson which he never forgot. He dreaded a repetition, and hence permitted opportunities to pass which a bolder and more enterprising leader would have improved.

Before a separation was declared, there had existed a division of sentiment among the Whigs as to the policy to be pursued; but now the issue was sharply drawn between submission and entire independence. The legal authority was thenceforth on the side of the latter; and whatever difference of opinion may have been entertained as to the expediency of the declaration, no open expression of dissent was tolerated, except under the protection of the British flag. Each individual was called upon to take his stand. The entire sovereignty was removed from the king; and, from necessity, the people assumed control, and established governments in the several States. The Confederacy ranged itself beside the independent powers of the world, claiming a place in the council-chamber of nations, and the rights to which it was thereby entitled. These were yet to be vindicated by the sword.

A common danger had brought the colonies together, and preserved them in harmony, yet Congress

possessed no jurisdiction whatever over its constituents. It could decree, but not execute. It was permitted to contract debts, but not to create a revenue to pay them; to form treaties, but not to enforce their provisions. Its inefficiency for the work in hand became speedily manifest; and ignoring the popular voice, the Articles of Confederation were prepared, conferring enlarged powers upon the central authority. Virginia, while assenting to them, insisted that her boundaries extended indefinitely to the West; but as that section of the country had yet to be conquered at the expense of all the States, and by their joint efforts and sacrifices, they demanded that it should be held as a general heritage to discharge the debt incurred during the war. Desirous of profecting the Union, all finally acquiesced except Maryland. The instructions to her delegates alleged, "These lands have been grasped from ambitious motives, and she (Virginia) has not a shadow of right to these territories;" and her Legislature proclaimed, the people of "this State considered themselves justly entitled to a right, in common with the other members of the Union, to that extensive tract of country which lies to the westward of the frontiers." Although yearning for a closer connection with her sisters, she remained firm in her determination not to agree to the proposed instrument until this question should have been settled to

her satisfaction; saying, however, "We will accede to the Confederation, provided an article, or articles, be added thereto, giving full power to the United States, in Congress assembled, to fix the western limit of the States claiming to extend to the Mississippi or South Sea, and expressly reserving to the United States a right in common in and to all the lands lying to the westward of the frontier aforesaid." Virginia was forced to yield to the pressure thus placed upon her: and it is safe to say, that, without this withdrawal of her pretensions, the "perpetual union" of the Confederation, and the "more perfect union" desired by our fathers, could never have been established; for, with her domain reaching to the Mississippi, she would doubtless have formed a separate and independent commonwealth.

IX.

NEW-YORK CONVENTION.

THOSE were no light words by which the patriot leaders pledged their lives and fortunes to the maintenance of a declaration severing all connection with Great Britain. It is true that her authority had been overthrown, and that she possessed at the moment no military force within the disrupted provinces: yet the ministers had affirmed in Parliament, that, the sword being drawn, measures would be pursued to enforce complete submission; and armies, forming, like a dark cloud, near the frontiers, threatened to overwhelm the newly created nationality. The subsequent period stands out as among the darkest in the revolutionary annals. Decimated by sickness, and discouraged by reverses, the Americans had been disastrously expelled from Canada. No ally had as yet dared openly extend a helping hand. Like raw recruits, the States had not learned to rely upon each other, and distrust existed among them. Their paper money was declining in value, and there was no provision made for the future support of a military force. Before the declaration was signed, a plot

had been discovered, formed by the Tories of New York, to make away with Washington and other officers of rank, and thus compel the surrender of the city to the British upon their arrival. General depression prevailed among the Whigs of the State, and McDougal wrote to Jay, that men of influence refused to accept commissions in the militia, and these positions had gone begging for many weeks. To encourage others by his example, the latter entered the military service.

The British authorities had early suspected that America was looking forward to a separation; and they consequently determined, while obtaining a revenue from her, to draw still tighter the bonds of colonial dependence. Their recent proceedings had satisfied Jay that this purpose would never be relinquished without a deadly struggle, and that no reconciliation could at that time take place compatible with the honor, freedom, and future advancement of the country. He therefore believed the entire independence of the colonies to be necessary to their security, and had already in the General Congress earnestly endeavored to prepare them in every way for the contingency which had arrived.

While thus employed, he was elected to the Congress of his native province, which was again to assemble in the city of New York, May 14, 1776, and, at the request of his fellow-members, left Philadel-

phia, and joined them eleven days later. He had hardly taken his seat, when the resolutions advising the establishment of adequate governments for the separate colonies were received, and referred to him and others for consideration. The delegates, while authorized to exercise supreme jurisdiction, had so far performed only such duties as were demanded by the exigencies of the occasion. They were engaged in a struggle for the preservation of local self-government, and would have been recreant to this principle, and have assumed a power with which they were not clothed, had they carried out the recommendation without a special warrant. Actuated by this conviction, the committee, through Jay, reported a series of resolutions declaring that the Provincial Congress had been organized for the sole purpose of resisting the usurpations of Parliament, requesting that delegates should be chosen for a convention to decide upon the expediency of forming a constitution, and providing, that, should a majority approve, they were to be invested with authority to frame such a one as should be deemed best calculated to secure the rights and promote the happiness of the people. His associates at Philadelphia applied for instructions with reference to a separation from Britain; and, at his instance, the powers of the proposed body were so enlarged as to enable it to determine that and every other question which might

arise in the future. No invading foe as yet trod the soil of New York, and the people were free to give expression to their wishes in matters so nearly concerning their political condition.

An assemblage, thus clothed with absolute power, met at White Plains on July 9, with Jay as representative from the city of New York. The Declaration of Independence, having by this time been adopted, was at once brought up for action. As chairman of the committee to which it was referred, he reported the same afternoon, "The reasons assigned by the Continental Congress, for declaring the United Colonies free and independent States, are cogent and conclusive ; and, while we lament the cruel necessity which has rendered that measure unavoidable, we approve the same, and will, at the risk of our lives and fortunes, join the other colonies in supporting it." This having been unanimously approved, the Convention ordered copies of the Declaration to be printed, and distributed among the inhabitants for their information. The passage of this resolution by a body voicing the sentiments of the people, withdrew their allegiance from a foreign power, and rendered all citizens adhering to the king, or giving aid or comfort to the enemy, guilty of treason against the State and country. On the motion of Jay, such persons were declared liable to punishment by death. However rigid he may have been in the discharge of public duty,

he displayed neither asperity nor harshness toward individuals. With the return of peace, past differences were forgotten, and old friendships revived.

The arch of American independence was sprung from Virginia and Massachusetts; but, were the keystone of New York withheld from the structure, it would topple to the ground. The situation was full of danger. That State had assumed her position in the very hour of conflict. An invading force had prevented the convention from meeting in the city. Indians and their white allies threatened her extended northern frontier. Disaffection and treason ran riot within her borders, stimulated and encouraged by the late royal governor. These were the difficulties to be met and overcome. The approach of Howe had driven Jay from his home; and for the succeeding two years, his whole thought, energies, and time were devoted to the interests of the newborn Commonwealth; all eyes were turned to him as the trusted leader; and amid scenes of peril, he is the prominent figure, re-assuring the timid, sustaining the weak, and bringing all the resources of the State to resist the enemy. Rather than allow the British to gain a foot-hold within its bounds, he had favored a policy of burning the city, desolating the neighboring country, and withdrawing to the interior; but such measures were too heroic for the public sentiment: and, though Washington was authorized to

destroy it in case of necessity, it continued the *entrepôt* and headquarters of the English during the remainder of the war.

Difficulties, with some, prove but opportunities; and those surrounding the convention seemed to inspire it with greater energy and determination. Lord Howe having shown an intention to secure North River, and thereby sever the States, that body appointed a secret committee for the purpose of obstructing its navigation. As a leading member, Jay was unremittingly occupied for some weeks; and at his instance a system of passports was established, to prevent intercourse with the city. As this proved somewhat inefficient, another committee was formed to inquire into and defeat all conspiracies. It was invested with unlimited authority to imprison, disarm, and banish Tories, or compel them to furnish security for their residence within specified limits. It was, in fact, empowered to exercise an extended and vigorous police system throughout the State; and, under Jay's active and vigilant leadership, its labors were attended with the happiest results in breaking up conspiracies, destroying communication with the enemy, and keeping New York faithful to the cause.[1]

[1] Local committees were appointed in each district to carry their resolutions into effect. The one at Kingston informed the Convention that the women surrounded the chamber, and said if they could not have tea their husbands and sons should fight no more.

The general despondency which followed Washington's retreat across New Jersey, induced the British commander to proclaim pardon and protection to those who would return to their allegiance. The convention thereupon issued an address to the people from the pen of Jay, which was found so effective in the State of New York, that the National Congress had it translated into German, and printed at the public expense, recommending it "to the serious attention of all the inhabitants of the United States." This eloquent and animated document says, "They tell you, that, if you submit, you shall have protection; that their king breathes nothing but peace; that he will revise — not repeal — all his cruel acts and instructions, and will receive you into favor. . . . Have you heard of any terms except absolute, unconditional obedience, and servile submission? . . . If he meant not to cajole and deceive you, why are you not explicitly informed of the terms, and whether Parliament mean to tax you hereafter at their will and pleasure? Upon these and like points, they are silent, unless a power to grant pardon implies a power to adjust claims and secure privileges; or, unless the bare possession of life is the only privilege which Americans are to enjoy. . . . If the British king really desired peace, why did he order your vessels to be seized and confiscated, that the men found on them should be added to the crews of his

ships of war, and compelled to fight against their countrymen — to spill the blood of their neighbors and friends, — nay, of their fathers, their mothers, and their children, — and all this before these ambassadors of peace had arrived on our shores? . . . If there be a single idea of peace in his mind, why does he order your cities to be burned, your country to be devastated, your brethren to starve and languish and die in prison? . . . If any thing were intended besides destruction, devastation, and bloodshed, why are the mercenaries of Germany transported near four thousand miles? . . . They plunder your houses, ravish your wives and daughters, strip your infant children, expose whole families, naked, miserable, and forlorn, to want, to hunger, to inclement skies, and wretched deaths; and why all this desolation, bloodshed, and cruelty? They tell you, to reduce you to obedience. . . . If there be any among us dead to all sense of honor and all love of their country; if deaf to all the calls of liberty, virtue, and religion; if forgetful of the magnanimity of their ancestors and the happiness of their children; if neither the example nor the success of other nations, the dictates of reason and nature, or the duties they owe to their God, themselves, and their posterity, have any effect upon them; if neither the injuries they have received, the prize they are contending for, the future blessings or curses of their children, the ap-

plause or the reproach of all mankind, the approbation or the displeasure of the Great Judge, or the happiness or misery consequent upon their conduct in this and a future state, can move them, — then let them be assured that they deserve to be slaves, and are entitled to nothing but anguish and tribulation. . . . But we think better things of you. We believe and are persuaded that you will do your duty like men, and cheerfully refer your cause to the great and righteous Judge. If success crowns your efforts, all the blessings of freemen will be your reward: if you fall in the contest, you will be happy with God in heaven."

Responsible for the safety of a State divided within itself, while invaded by a ruthless foe, the duties of the convention were arduous, unceasing, and at times perilous. From the White Plains, the stress of war had driven it successively to Harlem, Fishkill, Kingston, and finally to Poughkeepsie. It was often impossible to obtain a full attendance, and a special committee was therefore authorized to operate in its stead when less than a quorum were present. One or the other of these bodies was always in session; and for many months the records are made up of correspondence with their representatives in the Continental Congress, Washington, and other military authorities, or with instructions for the removal of stock from the seaboard to the

interior, the arrest of the disaffected, and the punishment of those corresponding with the enemy, or refusing to receive American currency. They provided for the wants of the army by procuring provisions, purchasing material, and manufacturing clothing, borrowing money, caring for the distressed refugees from New York, and treating with the Indians. The committee was constantly shifting its place of meeting, which at times was unknown, even to its adherents. Thus, we find the members assembled at "Odell's house," and, shortly after, at that of "John Blagg," apparently in order to be near, and observe the movements of, the enemy. Jay seems to have taken an active part in this as well as in the Constitutional body, a large portion of the business devolving upon him. He was daily in attendance, except upon one occasion, when leave of absence was obtained, to remove his aged parents to a place of safety. His farm on Long Island was occupied by the foe; and his wife having found a refuge with her father in New Jersey, no domestic duties interfered with those of a public nature.

The main purpose of the convention was to provide a constitution for the State, but the pressure of other matters had hitherto caused it to be postponed. On Aug. 1 a committee of thirteen was appointed, with Jay as chairman, to "prepare a plan for instituting and framing a form of government,"

which was to be reported on the 26th of the same month! Not, however, until the following spring was that instrument laid before the convention, when it was discussed paragraph by paragraph. In the draught he had thought it prudent to omit several important provisions, intending to propose them as amendments when the constitution as a whole should be under consideration. Before that time arrived, he was summoned to the bedside of his dying mother, and, upon returning, found, to his chagrin, that, with slight changes, it had been adopted the previous Sunday. He was greatly annoyed at this precipitate action, and declared that it was like a harvest cut before it was ripe, the grain being shrivelled. He had hoped to ingraft upon the organic law a clause providing for the abolition of domestic slavery, "when consistent with public safety and the rights of property," thinking thereby to confer upon New York the honor of being the first State to remove that colonial legacy. His efforts in that direction received the strenuous support of his friend, Gouverneur Morris; but the measure was defeated mainly by the votes of those counties bordering on the Hudson. He never lost sight of the purpose, and twenty years later had the supreme satisfaction, as governor, of affixing his name to an enactment proclaiming universal freedom within its borders. He had inherited from his Huguenot an-

cestors an antipathy to the teachings of the Romish Church, and, in consequence, endeavored to insert a clause, excluding from the elective franchise those who held that the pope or priest had power to annul oaths, or even to grant absolution. He was fortunately overruled, and unlimited toleration became for all time the policy of the State.

The rights of the colonies were, to a considerable extent, defined by the royal charters; and it was natural that these should suggest to the States the importance, and in many cases form the germ, of their written constitutions. Acting under the necessity imposed by the ministerial measures, and authorized, as we have seen, by the Continental Congress, nearly all of them had established distinct governments; Rhode Island and Connecticut retaining their charters, which embraced the safeguards essential to the liberties of their citizens. With the single exception of Pennsylvania, the supreme legislative power was everywhere lodged in two houses, while the executive and judicial departments were separate and independent in their spheres. All the constitutions were republican, and similar in their general character. Authority was recognized in them as a trust emanating from the people, and imparted for their protection.

That of New York continued in force, with slight amendments, for nearly half a century; and as it

embodied many ideas held at the time by Jay, and afterwards embraced in the Constitution of the United States, it is well to enumerate some of its provisions. After reciting the proceedings of the Continental Congress, the subsequent action of the Province, and the desertion of its royal governor, the document proceeds to say, "All power thenceforth reverts to the people;" and "this convention, in the name, and by the authority, of the good people of the State, doth ordain, determine, and declare that no authority shall, on any pretence whatever, be exercised over the people of the State, but such as shall be derived from and granted by them. . . . The common law of England, and all laws enacted before April 19, 1775, shall continue in force; and no person shall be disenfranchised or deprived of any right, unless by law, or the judgment of his peers;" and "the free exercise and enjoyment of religious worship, or profession, shall forever be allowed." Jay believed that those who owned the land should rule it: and the legislative authority was accordingly vested in an Assembly and Senate, the former to be elected by voters possessing freeholds valued at twenty shillings per annum; the latter by those whose yearly landed income amounted to one hundred pounds, New-York currency. The governor, chancellor, and judges of the Supreme Court formed a council

for the revision of all enactments, exercising over them the same qualified veto as the President of the United States does over those of the National Congress. The assembly had to select, yearly, one senator from each district, who, in conjunction with the governor, was to appoint all public officers. Here is seen that jealousy of the executive which had been aroused by the former actions of the royal magistrate. The State had recently been freed from this noxious influence; and the members hoped to protect it against the abuse of patronage by a diffusion of the appointing power, forgetting that while doing so they diminished responsibility in the same proportion. This feature of the constitution became in time the source of great political corruption, producing an unseemly conflict of authority, and with general approval was swept away at the close of Jay's second term as governor.

These were some of the provisions of the instrument adopted, with a single negative, on the evening of April 20, 1777. Owing to the disturbed condition of affairs, it was not submitted to the people for their sanction, as is customary at the present day, but was simply proclaimed by the secretary, standing on a barrel in front of the Court House at Esopus. It had yet to be established over the State; and with the enemy occupying some sections, and disaffection prevailing in others, how to accomplish

this became a matter for profound consideration. A committee of five, with Livingston as chairman, was formed, to prepare a plan for setting the new machinery in motion. The choosing of a chief magistrate and Legislature would require time; so after providing for their election, and organizing a judicial system, the convention bestowed upon a "Council of Safety" its anomalous and unlimited powers, and finally dissolved.

Jay had been made chief justice, with his former partner, Robert R. Livingston, as chancellor. Both of them were also members of this last body. Its duties during the next four months were constant and laborious. That period of time covered Burgoyne's invasion from the North, and Clinton's incursion from the South, the abandonment of Ticonderoga, and the advance of St. Leger, with his Indian allies, along the valley of the Mohawk. The consequent dismay and distrust resulted in the displacement of the austere but patriotic Schuyler from the command of the American army, and emboldened the disloyal to conspire for the overthrow of the incipient Commonwealth, and the delivery of the State into the hands of its enemies. Jay believed that the object of government was to govern, and therefore exercised the dictatorial power conferred upon the council, with the unflinching energy that such an extraordinary crisis demanded. The

disaffected were overawed, or punished for their overt acts, the disheartened patriots stimulated and encouraged, resistance was organized, and the complete installation of the new authorities was followed, after a brief period, by the surrender of Burgoyne, and the expulsion of the British from all the territory recently overrun.

Though George Clinton had been elected governor, and was inaugurated in July, he remained with the army in front of the enemy, his functions meanwhile devolving mainly on the Council of Safety. The Legislature chosen under the new constitution assembled in September, after which every thing proceeded with system and regularity. By the strenuous exertions of the patriot leaders during these years, amid unexampled difficulties, New York had been preserved to the American Union; and now, with a popular government over her extended territory, that Union was immovably fixed, and all hope of the ultimate success of the ministerial cause forever extinguished. 'Tis the last keystone that makes the perfect arch. While the convention was occupied in framing a constitution, Congress was engaged in a similar undertaking. Possessing less energy than the Swiss, weaker than the Dutch, and inadequate in times of peace, the articles of Confederation still claim respect as the harbinger of national sentiment, and the forerunner of an efficient organiza-

tion. South Carolina soon followed New York with a permanent constitution. Congress was then enabled to issue an address declaring, "Our respective governments, which compose the Union, are settled, and in the vigorous exercise of uncontrolled authority."

Jay had been solicited to become a candidate for the gubernatorial chair instead of Clinton, but declined the proffered honor as he could "be more useful" in the place he then filled. Though appointed chief justice of the State in the previous spring, the condition of public affairs had heretofore precluded the performance of his official duties. Now, however, when the other departments were in successful operation, it became necessary for the highest judicial tribunal to discharge its functions as the interpreter of the laws of the Commonwealth. On Sept. 9, the first term of the Supreme Court was held at Kingston. With a war raging, of which all shared the suffering, and none could foresee the termination, he was called upon to deliver his charge to the grand jury. He was but thirty years of age, with his early manhood ripened by varied experience in public life. Tall, and erect in carriage, the judicial robe added dignity to his appearance. The change of New York from a province to a sovereign State rendered the occasion one of peculiar interest. With the deepest feeling he said that Divine Providence had made the tyranny of princes instrumental in breaking the

chains of their subjects, reviewed the causes that had led to the separation from Great Britain, showed its necessity, and pointed out the duties which the citizen had thereby assumed. After commenting upon several features of the new instrument, he thus proceeded: "But let it be remembered, that whatever marks of wisdom, experience, and patriotism there may be in your constitution, yet like the beautiful symmetry, the just proportions, and elegant forms, of our first parents, before their Maker breathed into them the breath of life, from the people it must receive its spirit, and by them be quickened. Let virtue, honor, the love of liberty and of science, be and remain the soul of the Constitution, and become the source of great and extensive happiness to this and future generations. Vice, ignorance, and want of vigilance, will be the only enemies able to destroy it." Like most of the public addresses of Mr. Jay, this appears to have attracted a great deal of notice at the time of its delivery, and has since been frequently republished for its literary merit and patriotic sentiments. His commission as chief justice expired with the first meeting of the Legislature; but the Council of Appointment, by renewing it, testified their approval of his course. Unfortunately, no record has been preserved of the cases brought before the court, nor of the decisions rendered during the short period that he remained upon

the bench. For a long time past he seems to have had no permanent abiding-place, which, to a man of his domestic habits, was a source of continued discomfort. He now determined to remove his family from their retreat in New Jersey, and establish himself at the seat of government. Upon learning his intention, Schuyler, with characteristic generosity, proffered him a farm near Saratoga. This he was compelled to decline, as his father required his personal care. The death of his wife and the destruction of his home had depressed the spirit of Peter Jay; and his saddened old age demanded all the affectionate attention that the son could bestow, and hence the latter preferred remaining by his side.

In addition to his judicial duties, Jay, as a member of the Council of Revision, to which all bills were submitted before they became laws, was obliged to be in attendance upon the Legislature during its entire session. In the summer, he proceeded with Gouverneur Morris to headquarters, for the purpose of inducing Washington to re-enforce the army then operating in front of Burgoyne; and when the capture of the forts at the Highlands, and the burning of Kingston, had manifested the danger to be apprehended from the British at New York, the chief justice, with other State officers, selected West Point as the spot whereon to erect fortifications with a view of preventing further inroads.

X.

PRESIDENT OF CONGRESS.

THE territory lying between New York and New Hampshire had been the subject of controversy for many years, each of the provinces claiming its ownership. The question was referred to the authorities in England, who determined in favor of the first named. New Hampshire, in the mean while, made grants within the coveted domain, which had been cleared by their possessors, and were now under successful cultivation. When the decision was made in her favor, New York resolved not only to extend her jurisdiction over the country in dispute, but required possession of the lands held under these titles. Having reclaimed them from the wilderness, and given them a value by their labors, the settlers naturally protested against the injustice of the proceeding, and finally asserted their entire independence of the State. Both parties appealed to the Continental Congress, and New York demanded Jay's presence in that body for the protection of her fancied rights. He had resigned his seat as a delegate when ap-

pointed to the bench, and the Constitution forbade his resuming it except "on a special occasion." The Legislature in October accordingly declared that such then existed; and he was again elected, being commissioned by the governor, on Nov. 18, as a representative until the ensuing March, "and no longer."

On Dec. 7, 1778, he again took his seat after an absence of more than two years. The president, Laurens, had not given entire satisfaction; and having withdrawn with some feeling, the vacancy was promptly filled by Jay three days after his arrival, who thus became chief executive of the Confederated States. The elevation involved daily attendance upon Congress, and an extensive official correspondence, sweetened, withal, by none of the emoluments or patronage attached to office at the present day. A furnished dwelling, with table, carriage, and servants, was, however, provided at the public expense; and his style of living, therefore, comported with the dignity and importance of the station. His prudence, firmness, and devotion to duty, eminently qualified him for that post which he occupied for many months, without a single day's absence. Congress had yet to realize the necessity of creating separate departments with an efficient head to each, and hence spent a large portion of its meetings on mere questions of detail. Its overworked president was the organ of commu-

nication with the army, the State authorities, the French ambassador, and the country's agents and ministers in Europe.

It was greatly inferior in ability to those earlier assemblies which had conferred so much honor upon the country. Most of the men then prominent in resisting ministerial aggression, and proclaiming independence, were now employed abroad, or, disgusted with a position in which no credit could be reaped, and little good accomplished, had retired, or were engaged in the service of their respective States, where their influence might be felt, and some reputation acquired. As Gouverneur Morris expressed it, the members and the currency had alike depreciated.

The recent separation was a movement on the part of the people, but *they* were no longer recognized; and the several State Legislatures assumed the selection of delegates, who, in consequence, reflected the rivalries and jealousies of their constituents. Many adherents of the Conway Cabal were among the number, and secretly promoted measures adverse to Washington and the military. The want of harmony in the national councils had become painfully manifest, and aroused the solicitude of the leader of the army, who earnestly strove, by appeals to their patriotism, to bring back to the country's service those statesmen who had withdrawn into pri-

vate life. Some most important questions were to be brought before Congress whose decision would have great bearing upon the future destiny of the States, and men of high character and ripe experience were therefore needed.

The Legislature of New York had especially intrusted her chief justice with the management of the controversy relating to Vermont. There was, however, an evident unwillingness on the part of Congress to assume the settlement of so delicate a point. Many of the members thought that body had been instituted for the sole purpose of securing the liberties of the country, and was not authorized to go beyond this, and interfere in disputes between any one of the States and its recalcitrant citizens. During the past summer, it had instructed a committee to visit the New-Hampshire grants, and inquire into the trouble; but no proceedings had been taken in the matter. Jay's first object, therefore, upon his arrival, was to prevail on Congress to intervene in some degree; as he felt satisfied, that, by so doing, it would be led to a further and more effective interposition. He finally succeeded in having it assume jurisdiction, appoint a time to hear and examine into the case, and ultimately decide it upon equitable principles. When, however, the day arrived for the trial, a quorum of members from disinterested States was not present, and no action could be obtained.

Vermont had already formed a constitution for herself: and the question of her separation from New York dragged along for twelve years, when it was finally adjusted by her paying the latter State the sum of thirty thousand dollars for the relinquishment of all claims; and she was thereby quietly placed in a condition to be received into the Union. This, however, was not effected until a territory at the South had grown sufficiently populous to be admitted at the same time.

The winter of 1779 was passed by the British officers in comfortable quarters at New York amid a round of gayety and dissipation. Theatrical and other entertainments served to enliven the tedium of constrained idleness; and in the preparation of these, the accomplished but unfortunate André bore a conspicuous part. He wrote, among other things, a lampoon, the coarseness of which contrasted painfully with the deep tragedy of the following year. It was entitled "Metempsicosis," and professed to witness the final judgment passed upon several of the American leaders. The record says that "the allusions to Jacky Jay and other rebellious —— were excellent, and gained much applause." "The president of Congress, Mr. Jay," writes André, "now appeared; and I heard with emotion and astonishment that he had been remarkable for a mixture of the lowest cunning and most unfeeling barbarity, and that being indefat-

igable in the pursuits of ambition and avarice, by all the ways of intrigue, perfidy, and dissimulation, he had acquired the station of a chief justice, and had framed and enforced statutes that destroyed every species of private security and repose." The court thereupon ordered, "that he transmigrate into the most insidious and most hateful of all animals, a snake; but to prevent his being able any longer to deceive, and thereby destroy, a large set of rattles was affixed, to warn mankind to shun so poisonous a thing."

While the British were thus amusing themselves, the American troops, hutted in the open country, endured privations of every kind. These were so great that Washington deemed affairs worse than at any former period, and at one time thought it hardly possible to keep his forces together. The great Frederick said in homely phrase that "an army, like a snake, moved on its belly;" and the inefficiency of the commissariat prevented the commander-in-chief from undertaking any enterprise, however promising. He stated that his soldiers were half starved, imperfectly clad, robbing the farmers from sheer necessity, and that they ate every kind of horse-feed except hay. The currency had become so depreciated that no proper provision could be made for them in advance. In the beginning, it was hoped that the determined attitude of the people would soon induce

the mother country to recede from her pretensions, and hence no permanent arrangements had been made to meet the expenses of the seven years' struggle which ensued. Before the Declaration was issued, France and Spain had, in conjunction, furnished material supplies; and, in order to meet further demands, a paper currency, based on the faith of the associated colonies, was authorized, and an appeal for loans made to the moneyed men of the country. The same general system of finance was pursued by many of the States, and thus nearly all of them became borrowers. The security they offered being of a less questionable character than that of the Confederacy, its loan-offices failed to gather in much pecuniary assistance. The cohesive power of the States was too slight to bear any strain; and no requisition was made upon them by the central authority until 1777, when only three millions were obtained — one-half of the amount solicited. In the present condition of the world, money is necessary in carrying on any successful war; and, by reason of their possessing greater facility in procuring this commodity, commercial nations have an advantage over those dependent upon agriculture. Privateering, though looked upon as a serious drawback to recruiting the army, had proved of considerable service; for the captures made, when aided by the contributions of France, had assisted in somewhat buoying up the

sinking finances. The main reliance for the prosecution of the war seemed, notwithstanding, to rest upon the currency issued by Congress; and this ready means of providing funds without open taxation, induced a frequent resort to the printing-press. The inevitable consequence followed. The purchasing-power of the paper lessened with its continued emissions; and gambling, monopoly, and speculation became rife throughout the country. Irredeemable notes to the value of one hundred and fifty odd millions were afloat besides those of the States; and the attendant evils had become so manifest, that Congress determined to limit the amount to two hundred, and called upon the separate States to contribute, first fifteen, and afterward forty-five, millions. To render this appeal more effective, the president prepared a circular to the several Legislatures, laying bare the financial embarrassment, pointing out its cause, and proving the necessity they were under of aiding a Confederacy rapidly drifting into bankruptcy. He further demonstrated, that upon the restoration of peace, now assured by having an ally, the country would be able to discharge all obligations incurred while establishing independence. This appeal, like others of the kind, failed of its purpose. No available resource remained but a further issue of currency, which was followed by a still further decline in value. After the usual round of efforts

to support what had no foundation, the paper money died in the hands of its possessors, quietly passing out of existence ere the year ended. It had been of infinite service during its life, yet its demise was regretted by none.

The surrender of Burgoyne had led France to openly espouse the cause of the colonies, and the intimate connection between the courts of Versailles and Madrid gave hopes that Spain would pursue a like course. She had already secretly aided them with military stores, and it was thought that her active participation in the struggle would prove decisive. With this view, provision had been made in the French treaty for her joining the league against England. Though her sensibility had been wounded by that power's imperious conduct in the Falkland-Island flurry, and she was therefore quite willing to be instrumental in reducing British arrogance, there were objects of her own in America which she desired to secure before engaging as a principal in the contest. These were the undisputed possession of the country west of the Alleghanies, where King George had forbidden his subjects to settle; the exclusive navigation of the Mississippi River; and an acknowledgment of her right to conquer and retain Florida, and thus dominate in the Gulf of Mexico. She was displeased that the French Court, knowing her wishes, had not regarded them

when entering into alliance with the United States. The necessities of his country were at that time too great for Franklin not to have conceded every thing required, had the two European powers joined in demanding it.

National decay and national pride had gone forward side by side; and Spanish statesmen instinctively dreaded the enterprising spirit of America, and the effect that her success would have upon their own possessions. Grimaldi, the premier, had written Choiseul, "This [independence] would be dangerous by the sagacity, persistence, and steadfastness of the measures that America would take for carrying out plans of conquest." As early as January, 1776, the Continental Congress had authorized the capture, from England, of the castle and barracks at St. Augustine; and American commerce, with the connivance of the royal governor, had recently obtained a foot-hold at the city of New Orleans. The knowledge of these proceedings was not calculated to remove Spain's prejudices against the English colonist.

She held aloof, and, though urged by France, hesitated throughout, at no time overcoming her apprehensions, and cordially granting open assistance. In February, 1779, Congress was officially notified of her proffered mediation between the belligerents. The matter was at once referred to a

select committee, with Gouverneur Morris as chairman, whose able report, embracing all questions likely to arise, furnished to a large extent a basis for the treaty ultimately negotiated with Great Britain. The reader must bear in mind that instructions were to be prepared for an envoy to Madrid, as well as for the commissioners who were to be intrusted with the negotiation of a general treaty of peace. In drawing up the documents, not only was proper consideration to be paid to the expressed condition of the alliance with France, but her interests were to be consulted when not conflicting with those of America. Though Neckar presided over French finances, the expenses of the war were rapidly exhausting the country's resources. To secure, therefore, the aid of Spain, — her ancient ally, — she was not unwilling to have the United States sacrifice indisputable claims, and accept the mother country's proposals of peace, even though British pride should debar a formal concession of independence.

Gerard, the French minister, had before directed the attention of the members to the propriety of endeavoring to enlist Spain in the common cause, and intimated, that, if America would conform to her wishes in the matter of the Western claims, she (Spain) would enter cordially into the alliance, and pecuniary assistance to a large amount might then be reasonably expected. In a personal interview

with Morris, and subsequently with Congress itself, he strenuously endeavored to win them over to this view of the situation, — to have them abate their pretensions beyond the Alleghanies, and direct their commissioners, that, if found necessary when negotiating a peace, they should yield the point of an express acknowledgment of their country's independence.

The report on the subject, made by Morris's committee, gave rise to a prolonged discussion in Congress, which brought out in strong relief the sectional feeling heretofore almost dormant. The questions relating to the eastern boundaries, independence, and the evacuation of the country, were settled with little difference of opinion ; but those respecting the fisheries, and the rights of the United States upon the Mississippi, representing, as they did, opposite interests, evolved much heat during the debate. The Newfoundland fisheries, employing great numbers of mariners, had been a source of large revenue to the New-England people, who were naturally unwilling to part with any of the advantages they had enjoyed when under British rule. It was supposed that the mother country, while in the act of releasing her former subjects from their allegiance, would desire to exclude the new-born States from a share in what she always asserted was an unfailing resource for seamen. It was therefore

a matter of earnest consideration whether a participation in them should be made an ultimatum in the proposed instructions, and, if so determined, how far the support of France could be counted upon. As the fisheries were exclusively an Eastern interest, the Southern members were indisposed to pledge the country to the maintenance of pretensions thus put forward at the hazard of prolonging a destructive war for an indefinite period. The invasion of the royal forces was pressing heavily upon Georgia and the Carolinas. Charleston had been taken; and the British troops were sweeping over portions of those States, destroying the crops, carrying off the negroes, and devastating the country.

The United States claimed the territory as far west as the Mississippi River, and down the stream to the thirty-first parallel, with the common use with Spain of its waters above that point, and desired to secure its unrestricted navigation onward to the ocean. With contracted ideas of the future great importance of the river, or possibly by way of a counterpoise to the Southern position respecting the fisheries, Jay, and most of the New-England delegates, expressed themselves as not unwilling to give up a part of their claims, could Spain be thereby induced to join the alliance, and assist their country in its arduous struggle for independence. Some of them believed that the remainder of the territory

belonging to the Confederacy was sufficiently large for all national purposes, and would have been satisfied to have that portion beyond the Mississippi in possession of a people speaking a foreign language, as a barrier against the tide flowing to the Occident. Emigration had already begun, and the States that they represented were apprehensive of being drained of population.

Their prophetic vision failed to embrace the future grandeur of their country's domain, as well as the great commercial value of the Mississippi. This is evident from what Morris wrote the following year: "As to its navigation, everybody knows that the rapidity of its current will forever prevent ships from sailing up it." An assertion like this will cause a smile at the present day; but it must be remembered that this opinion was expressed thirty years before the "Clermont" stemmed the downward flow of the Hudson, on her initial voyage to Albany. The Southern members, with truer national instincts, realized in a measure the river's infinite importance to the Union, and demanded that, in any arrangement made, the absolute right to its free use north of thirty-one degrees should not be surrendered. Notwithstanding the impatience and intrigues of Gerard, or perhaps in consequence of them, the debate on these instructions continued in Congress during the entire summer. The numerous

suggestions made from time to time indicate the difficulty experienced in arriving at an agreement. It so happened that the delay was a fortunate circumstance for the interests of the Confederation. The effort of Spain to mediate between the nations at war proved fruitless, as had perhaps been foreseen; and in the following June she was, as an ally of France, involved in hostilities with England. America was thus relieved from the necessity of conceding any thing to obtain her assistance, for which she would have been willing to make large sacrifices.

This changed aspect of affairs solved the difficulty under which Congress labored; and, in framing instructions for a plenipotentiary at Madrid, it passed over the question of boundaries altogether, and directed him to negotiate a commercial treaty with Spain, and, if possible, borrow money from her. He was authorized to guarantee her the possession of Florida, should she succeed in wresting it from England, provided the United States should in return "enjoy the free navigation of the river Mississippi into and from the sea." The instructions prepared for the commissioners who were to treat with Great Britain, required them to demand an express acknowledgment of independence, and a participation in the fisheries. It was determined, however, that this latter claim should not be made an ultimatum.

Matters having been thus happily adjusted, Congress proceeded to appoint a minister plenipotentiary to reside at Madrid, and conduct the negotiation. The qualifications of Jay had long since pointed him out as a most suitable person for the position; and on Sept. 28, 1779, upon the motion of Mercer of Virginia, he was accordingly elected; the annual salary attached to the office being subsequently fixed at twenty-five hundred pounds sterling, besides one thousand to each of his secretaries. He now resigned the chair, after fourteen months' occupation, to serve his country in a wider field, and one weighted with heavy responsibilities.

XI.

MISSION TO SPAIN.

THE French ambassador wishing to return home, Congress had tendered him the frigate "Confederacy" for the purpose; and it was now arranged that the newly appointed plenipotentiary should embark in the same vessel. His instructions having been prepared, Jay hurriedly departed, in October, on his mission, accompanied by his wife, with her brother, Brockholst Livingston, as his private secretary, and Mr. Carmichael as secretary of legation. His experience in public life had heretofore been among friends who were enlisted in the same cause, and from whom he could seek counsel and advice in any emergency. A new scene was now opening before him, calculated to task all his abilities, industry, and self-reliance. He was no longer the deputy of a State, but was proceeding abroad as the representative of the whole country, prepared to advocate her claims, promote her interests, and sustain her dignity before a court hedged round with ceremonial to which he was a stranger. Its diplomatic organ

was a prime minister, dignified, astute, and irascible, who looked upon the uprising in America as treason to a lawful sovereign, and fraught with danger to all States having colonial dependencies.

In a gale off the banks of Newfoundland, the "Confederacy" was dismasted, which, followed by the displacement of her rudder, compelled her to bear away for the island of Martinique. Upon their arrival at that place, the passengers were transferred to a French frigate, which sailed two days later, and, narrowly escaping capture by a British man-of-war, reached Cadiz before the close of the succeeding January. Mr. Carmichael was sent thence to Madrid, with despatches from Jay announcing his arrival, stating his determination to await permission before proceeding to the capital, and expressing the desire of Congress that Spain should join the alliance. Count Florida Blanca replied, assuring him there was no obstacle to his coming to court for the purpose of settling upon the manner and forms of a negotiation, but that, until these points should have been adjusted, it would not be proper for him to assume an official character, as that must depend upon a public acknowledgment by the government, and a future treaty between the countries. The tenor of the despatch made it evident to Jay's mind that Spain attached great importance to her recognition of the United States, and was not dis-

posed to grant it without ample compensation. Her authorities were chagrined, as we have seen, that her interests had not been protected by France; and although the family compact had drawn the two countries together, it was known that their subjects still entertained for each other much of the antagonism which had been engendered in the previous century.

Upon the strength of the cold and formal permission granted him, the American envoy journeyed on to Madrid, where he arrived early in April. A document from the prime minister was at once placed in his hands, asking, as preliminary to any negotiation, specific information about the government, revenue, and debts of the American States, and their ability to assist his Catholic majesty should he consent to occupy in the alliance that place which had been reserved for him. To the numerous questions propounded, Jay made an elaborate and exhaustive reply, giving the population, resources, and condition of his country, and dwelling upon her ability to discharge any obligation incurred while overcoming the common enemy. He closed by expressing the opinion that a supply of military stores and a moderate sum of money furnished by France and Spain would prove the most effective means of reducing the power of an irreconcilable enemy to the House of Bourbon.

Building "castles in Spain" has become proverbial,

and Congress in the present case certainly banked on hope; for, without even waiting to hear of Jay's arrival, it had authorized drafts upon him to the extent of a hundred thousand pounds. His dignity was necessarily lowered, and his future influence impaired, by this unfortunate though unavoidable course, as he was thereby placed in the mortifying position of a needy solicitor at the court rather than as the representative of an independent State. He had hardly sent his reply to Florida Blanca's letter, when advice was received of this proceeding, and of the probable early appearance of some of the bills in question. The situation necessarily caused him extreme embarrassment; and the matter was at once made known to the premier, with the not very satisfactory apology that Congress thought "they could avail themselves of his majesty's friendship on no occasion more agreeable to him and advantageous to them."

In the interview which followed, the count dwelt upon the straitened condition of the Spanish finances caused by the war in which the nation was then engaged, and the consequent failure of remittances from its colonial possessions. He, however, assumed the payment of such bills as might be presented during the remainder of the present and the earlier part of the following year. Their aggregate amount was estimated at thirty or forty thousand pounds, and he thought it might be in his power to

furnish in addition some supplies of cloth for the distressed American army.

Having, as he supposed, smoothed the way, he introduced the subject of a treaty between the countries, intimating that the only obstacle was the pretensions of the United States at the West. He had received from his agent, Mirales, information of the debates in Congress, was aware of the ambassador's instructions, and said that, while his Catholic majesty was disposed to extend all the aid in his power, he would, under no circumstances, relinquish his claim to the exclusive navigation of the Mississippi. It was suggested on the other side, that perhaps some equitable adjustment of the matter might be made; but the count rejoined that the king had this question very much at heart, and would never relinquish his claim, and, when taking leave of Jay, desired him to turn his thoughts to the subject, and try if some way could not be found to get over the difficulty, — in other words, if he could not violate his instructions. Spain showed no disposition to enter into any negotiation unless this point should first have been conceded. The assistance she had agreed to render, would, it was thought, keep alive the hope of further aid, and induce Congress to yield and grant what she so earnestly desired, — the back country, and particularly the control of the Mississippi from its source onward to the ocean.

Ere this diplomatic skirmishing took place, England had realized her inability to reduce the Americans to obedience when supported by the two European powers, and, accordingly, sent Cumberland, the dramatist, to Madrid, to persuade the premier that Spain's interests would not be subserved by the independence of the States; that this once established, their citizens would open a contraband trade with her colonies, and, if necessary for the purpose, make war alike upon Portuguese and Spanish settlements, ravaging their coasts, and destroying their commerce and shipping. He therefore proposed that the dispute between Britain and America should be adjusted upon equitable principles; that the four European powers having colonies should guarantee each other their possessions, which were not to become involved when hostilities arose between the parent States. As an inducement to enter this grand Confederation, the three others were to be allowed to participate in England's colonial trade without conceding the same privilege in return. Spain was too wary to be entrapped by this proposal, and, though she coquetted with other advances of a similar nature from Sir William Jones and others, remained faithful to her engagements with France.

Numbers of bills of exchange for small sums continued to arrive from time to time, which Jay accepted, relying upon the promise of the government to pay

at maturity. After his first conference with the count, he had advised Congress, that, if they would only adhere to their determination respecting the river and western boundaries, he thought his Catholic majesty might be willing to adjust those questions in a satisfactory manner; and, in conformity with his suggestions, they had reiterated the decisive instructions already given him. The authorities, in their intercourse with the envoy, had been careful to guard against any acknowledgment of his country's independence, and, in order to satisfy themselves as to his having received further powers authorizing him to yield the points at issue, sent an agent to sound him on the subject, whose unfavorable report determined them to limit their aid to the extent already agreed upon, though other and further drafts had been honored with the minister's knowledge and approbation. An emergency was thus precipitated. Under Morris's skilful administration of the American finances, the credit of the country was just reviving at home; and as it was of the greatest moment that it should be fostered and preserved, Jay's sense of duty led him to form the bold resolution of staking name, character, and fortune, and, accepting all future bills, trusting to chance for their ultimate payment. By doing this, he assumed a personal liability for their liquidation; but the shipwreck of the newly established financial system

might thus be prevented, and would, under any circumstances, be deferred for many months.

Before October his responsibility had reached the sum of $50,000. When the time for payment had nearly arrived, and Spain declined to render any further assistance, he called upon France without effect. Franklin, at Paris, equally patriotic, though weighed down with engagements, came to his relief with one-half the requisite amount, and thus enabled him to meet the first maturing drafts. This strengthened him in his resolve to accept all that should be presented in the future, and in consequence he soon became bound for more than $100,000. Finding him inflexible, the Spanish Government relaxed, and agreed to make further advances, amounting in all to $150,000. Congress for the time ceased drawing bills ; and a crisis was happily passed, which displayed in a most striking manner the decision, patriotism, and firmness of the ambassador, as rising superior to all personal considerations.

Though unpleasantly situated, he felt the importance of appearing to the world to have a good understanding with the authorities, and followed the king to St. Ildefonso and Aranjuez. He was not, however, presented at court, and, in consequence, not recognized in "society." His wife lived a retired life, occupied with the care of a daughter, born during their sojourn at the capital. When

about leaving home, the widow of Gen. Montgomery had written of her, "She is very handsome, which will secure her a welcome, while her understanding will gain her the hearts of the most worthy: her manners will do honor to our country-women, and will please, even at the court of Madrid." Their position afforded no opportunity of displaying the charms of her person, mind, or manners, except to a limited number of friends, who fully appreciated what was debarred the court-circles.

Jay's letters from home, though infrequent and long delayed, had brought the news of Arnold's defection, and the disastrous defeat of Gates at Camden, which with Spain's evident indisposition to negotiate, the intrigues of English agents at Madrid, and the necessity he was under of providing funds to meet his acceptances, made his isolated situation peculiarly embarrassing, and difficult to sustain with composure. The past few months had been full of heavy responsibilities, and consequent solicitude. Upon going abroad, he had left behind his only child, a boy of three years. Anxiety of mind, combined with the unhealthy climate of Madrid, had told upon the health of both parents; and they were now called upon to suffer the loss of the infant that promised so much happiness in their quiet domestic life. Mrs. Jay wrote home, "Vain are my efforts to divert my thoughts from grief,

while my heart is still under its influence for the loss of a lovely little daughter; but private afflictions must give place to public calamities." She said at another time, "Incited by his [Jay's] amiable example, in all our perils, I gave fear to the winds, and cheerfully resigned myself to the disposal of the Almighty."

The difficulties of the envoy's position were to be increased by the action of Congress. Early in July, 1781, the count placed in his hands a despatch from home, which bore evidence of having been opened, instructing him to recede from the demand for the joint navigation of the Mississippi, and expressing a hope that this concession on the part of America would result in a treaty with Spain, and further pecuniary assistance from her. This course had been determined on early in February; but the letter announcing the resolution had doubtless been held back by the Spanish authorities, who were familiar with its contents. The Southern States, with a proper regard to the future development of the country, had heretofore strenuously insisted upon the free use of the river; but now, at the suggestion of Virginia, this attitude was abandoned by all, North and South, except North Carolina, Massachusetts, and Connecticut, the vote of New York being equally divided. Jay, as we have seen, had recommended that Congress should adhere

firmly to the stand they had taken before he left home.

They had of late reiterated their former instruction, saying, "If the right of navigation to and from the sea cannot be obtained, it is not on the part of America to be extinguished." What had caused this sudden change of front? It can only be accounted for by some outside influence. We know that from the beginning, France had been desirous that the United States should recede from the Western claims in order to conciliate Spain, and that her new minister at Philadelphia had intrigued with Congress, endeavoring to mould them to the promotion of certain interests of his country, regardless of those of the nation to which he was accredited. It is further known that his secretary, Marbois, held intimate relations with a distinguished gentleman of Virginia; and a later generation put these facts together, and drew the inference, that, through the latter's agency, French contrivance had wrought this alteration in America's position on the Mississippi question. There is no means of learning how far such surmises were correct. In the phraseology of the journal, "The delegates from Virginia, in pursuance of instructions from their constituents, proposed to recede from the free navigation below thirty-one degrees." What moved her Legislature to issue such instructions? Were the members from

any other Southern State likewise directed to abandon a peculiarly American principle, — that nations bordering on a stream possess the unrestricted right of navigating it to the ocean ?

Jay was naturally mortified at having to withdraw from the ground he had assumed, and his annoyance was increased by knowing that his antagonist was acquainted with these instructions. He, however, with a good grace, entered upon the distasteful task, and in proposing a treaty to Florida Blanca, in accordance therewith, stipulated upon his own responsibility, that, if the terms were not adjusted before the settlement of a general peace, the proposed relinquishment should not be binding upon his country. The eyes of all Europe were at the time fixed upon the pyrotechnic display at Gibraltar, and the advances on the part of the American diplomatist proved fruitless.

In truth, the negotiation of a treaty was never seriously commenced, and the difficulties arising would have utterly discouraged any other than a most devoted patriot. Spain was cold, haughty, and repellent, realizing, that, were independence once admitted, no special advantages could be obtained without an equivalent return. She may, too, have thought that such an acknowledgment would complicate her prospective negotiation with England. All Jay's energy and diplomatic skill failed to overcome

Spanish inertia, and the settled determination of the government to wring from the distress of his country an abandonment of all her rights at the West, in return for recognition and pecuniary assistance.

The situation was indeed anomalous. Spain's colonial policy had always been arbitrary and exacting. With her own possessions held in strict subjection, she was asked to aid those of another power in revolt. An absolute monarch was solicited to ally himself with a democratic republic, whose religion and language were foreign to his own. A country where freedom of thought was repressed, was expected to sympathize with one breaking away from all traditions of the past. His most Catholic majesty was called upon to support a Congress whose predecessors had protested against enlarged liberty to persons of his own faith, and admittance was sought to the most haughty and exclusive court in Europe by a simple untitled gentleman from the wilds of America. It was fortunate for both countries that self-seeking, a lack of sound policy, and wise statesmanship, on the part of Spain caused her to decline the American overtures. She might as well have attempted to dam the great Father of Waters as to stay the onward march of the Anglo-Saxon toward the Gulf. Yet none but the Omniscient could then foresee that within half a century she would be divested of every foot of territory bordering on its

waters, and that from the southern cape of Florida to the Peninsula of Yucatan no Spanish official would be found.

Jay's correspondence with Florida Blanca, while creditable, betrays the suffering condition of the United States in the dark midnight of the Revolution, and the great importance attached to a Spanish alliance. It is marked throughout by uniform prudence and elevated patriotism; and, while it indicates in the beginning some natural trepidation, his ability, tact, and earnest frankness show him in diplomacy quite an equal of the astute and artful premier of Charles III.

The same vessel that brought his latest instructions, also brought the announcement of his appointment as one of the commission to negotiate a treaty of peace with Great Britain; and, being summoned by Franklin, he soon left for the French capital. When Florida Blanca became satisfied that Great Britain seriously contemplated a general settlement, he feared that he had overreached himself, and grew more conciliatory in his bearing. He had fallen into the mistake of not following up America's proposal, by doing which, even if an adjustment of the claims of the two countries could not have been had, he would, at least, have learned the exact extent of her concession, and could then have determined upon his future course.

Jay, on his part, congratulated himself that the impolitic offer made through him to yield the navigation of the Mississippi had not been embraced; and that, while tendering this in obedience to his instructions, he had restricted its acceptance to a period that now seemed nearly past. He thought, also, that it was unwise for a young and growing republic like the United States to ally itself with an old and decrepit monarchy that had steadily declined its proffered friendship, and refused to enter into any engagements in the day of trial. He left Madrid without regret, disgusted with the prime minister for his chicane and duplicity, and for the extreme embarrassment and mortification caused by the non-fulfilment of pledges for the payment of his acceptances. Besides these personal grievances, he felt that little gratitude was due Spain for her pecuniary aid. She had acted in an unfriendly manner by permitting British troops, which had surrendered at Pensacola and the Bahamas, to be transported to New York, thereby strengthening its garrison, instead of stipulating to have them sent to Europe.

Before leaving Madrid, Jay was notified by Florida Blanca that D'Aranda, the Spanish minister at Paris, had been authorized to continue the incipient negotiation, and, a few days after his arrival at the French capital, placed himself in communication with that important personage. In an early interview he ex-

hibited his commission to treat; but, though D'Aranda claimed to have full powers, he failed to produce them. The simple assertion on his part was not satisfactory to the American, who declined proceeding further unless assured by their exhibition that his adversary possessed like powers with his own.

Jay was a man of simple habits, and indifferent to outward forms; yet when abroad, representing a country whose position was not definitely established, he required for it the very highest respect and consideration. When the alliance between France and the United States was formed, Gerard had not shown his commission to Franklin until the close of the negotiation; and D'Aranda, unwilling to recognize their independence, now assumed the same ground, overlooking the obvious difference in the situation. The struggling colonies were then soliciting the assistance of a powerful nation, and it was not for them to stand upon a question of punctilio. France at that time was at peace with England, and had the right to determine the manner in which she would embark in the contest. Spain, on the contrary, was now engaged in the war. The freedom of America was assured. She had demonstrated her ability to maintain independence, and consequently demanded admittance into the sisterhood of nations on a footing of equality. When adjusting her American treaty, France had met the colonial advances in a liberal

spirit; while Spain, on the other hand, had refused any recognition, and baffled every effort to induce her to join the common alliance, hoping to secure her own selfish objects. The policy she pursued was to encourage resistance by doling out scant supplies, but to decline granting any effective aid, even against her own enemy.

When Jay went to Madrid, it was intimated to him that the navigation of the Mississippi was the main obstacle to negotiation. Territorial pretensions soon followed, until at last he was notified that all questions between the countries could be more satisfactorily settled at the general peace. In view of the negotiation with England, it had become expedient for Florida Blanca to officially learn the full extent of America's claims. This could have been ascertained at Madrid as well as at Paris; but he feared that treating with that country would clothe her with the rights of an independent power, and hence desired in an indirect way to obtain the necessary information. Though advised by Vergennes, the Foreign Secretary of France, that D'Aranda's commission as ambassador was sufficient, Jay remained firm. Rayneval, chief clerk in the Foreign Department, took the matter in hand, and, unsolicited, furnished him with an elaborate and carefully prepared memorial, contravening the demands of the United States, and, by way of a compromise, suggested new boundaries

between them and Spain. Even this formidable document failed to draw him into any discussion of the subject unless D'Aranda's full powers should first have been exhibited.

The time thus passed away, the settlement with England proceeding in the mean while. Near the close of the year, Jay wrote home, "Our negotiations with Spain are at a stand-still. Count D'Aranda either has not, or does not choose to show me, the commission to treat." After the preliminaries between the United States and England had been adjusted, the Spanish authorities were prepared to recognize the independence of the former; and he was invited to return to Madrid, and there settle the question at issue. This he contemplated doing, but his health forbade; and further negotiation between the countries was therefore transferred to America, to perplex and annoy her statesmen for many years to come.

XII.

THE TREATY OF PEACE.

THE correspondence of Lord North with his sovereign shows that he had long despaired of success in conquering America. His indolent disposition and mistaken sense of duty, however, caused him to yield to the urgent entreaties of a stubborn master, that he should retain office, and continue hostilities, without a specific purpose. The attempt to subjugate the colonies had, in the beginning, received the cordial approval of the people of England; but the entry, first of France, and then of Spain, upon the stage, along with the heavy burdens laid upon their shoulders, turned the current of feeling. The supporters of the ministry in Parliament steadily declined in number after its corruption at home, the impolicy of its proceedings, and the inefficiency of the military operations, had been laid bare. The surrender at Yorktown carried dismay into the cabinet, and nothing but the king's tenacity prevented then an abandonment of the contest.

The opposition to ministerial measures in the Su-

preme Legislature was composed of two divisions. In the one, led by the Marquis of Rockingham, were Fox, Burke, and other Liberal statesmen. These advocated a general peace, conceding independence, if necessary, as a prerequisite. The other embraced the old followers of Chatham, now enlisted under the Earl of Shelburne, supported by Dunning, Barré, and Camden, who, while favoring a general settlement among the belligerents, were yet unwilling to yield all control over their former colonies.

When the new Parliament assembled, it numbered Pitt and Sheridan among its members; and the campaign against the ministry was opened with great vigor by Fox and his adherents in one House, and Shelburne and Rockingham in the other — North, almost unaided, gallantly facing the powerful opposition. On Feb. 22, 1782, Conway moved in the Commons that the effort to reduce America to obedience should be abandoned; and so greatly had the ministerial majority decreased, that the resolution was lost by a single vote. The opposition, inspired by the prospect of ultimate success, became more aggressive in the impeachment of the ministry, and more offensive in allusion to the sovereign. The end soon came. In less than a month a motion expressing a want of confidence in the government was prepared, and would have passed the Commons but for the precipitate resignation of the cabinet.

In the temper of the country, it was evident that no Tory ministry could be established; and the king was therefore compelled to summon to his assistance men who had early opposed taxation of the colonies, with those who had denounced the war upon them as unjust, and waged for an unholy object. Among the latter were some not only pledged to their independence, but who in debate had rendered themselves obnoxious to his majesty. He was not disposed to overlook any want of respect. He had hoped, in the commencement of his reign, to turn back the wheels of progress, reclaim authority wrested from his ancestors, and give his government a more personal character. Thwarted at home, his attention had been turned to America. His pride was therefore involved, and his feelings as a man permitted to interfere with his duties as a constitutional sovereign. When thus necessitated to change his advisers, he declared the day was a fatal one, and, rather than submit to what he termed Whig dictation, was prepared to abandon the kingdom, and seek refuge in the quiet of his electoral dominions. Independence, if wrung from him, would be grudgingly conceded.

The very magnitude of their victory prevented the Whigs from reaping its full fruition. The king felt humiliated, and still clung to the idea of subduing his late colonies. He tried at first to strengthen North's

administration by admitting some of the opposition leaders, and had authorized the chancellor to see Rockingham for the purpose; but that nobleman made independence a *sine qua non*, and the plan was consequently frustrated. After North's resignation had been accepted, he compelled him to remain in office until a new cabinet could be organized, embodying the seeds of an early dissolution. He refused to see Rockingham, its future chief, until the appointments should have been settled, and carried on all further negotiations through Shelburne, though assured by him that he — Shelburne — was not necessary to Rockingham. Thus the door was left wide open for duplicity on the one side, and misapprehension on the other. After vainly trying to bargain with each wing of the party, the king found himself compelled to form such a ministry as would be acceptable to the House.

In the new arrangements, Rockingham was placed at the head of affairs, with Shelburne and Fox as joint secretaries of state. Thurlow, the *bête noir* of the administration, in deference to the king's wishes, was continued as chancellor. Pitt, with instinctive sagacity, declined to take office, saying he would accept no inferior place. The subordinate positions in the government were parcelled out to the followers of the respective chiefs. The equality with which this was done indicated an alliance rather than a blending of the sections, and that each had its own

advantage quite as much at heart as that of the country. Rockingham was amiable, and possessed an unblemished character; but his moderate abilities and constitutional diffidence unfitted him for the duties he had assumed. His name is associated with the repeal of the Stamp Act, and his reputation as a good man and pure statesman embalmed in Burke's gorgeous rhetoric. Shelburne was aspiring, unpopular, and was accused of insincerity. He had been in office with Chatham, and had devoted considerable attention to the subjects of finance and diplomacy; but his limited knowledge of human nature rendered him a fit tool for an intriguing monarch and an unscrupulous chancellor. The construction of the cabinet was, in truth, a masterpiece of regal skill, and was aptly described by Fox as half Whig and half royal. As was to be anticipated from its composition, distrust soon sprang up; and at times the members came near breaking into open hostility. Shelburne and the chancellor, it was known, had the ear of the king; the former was one of the opposition least offensive to him; the latter, his confidant, was prepared at any time to aid him in overthrowing the obnoxious ministry, and was more than suspected of double-dealing.

The late Tory administration had been unable to settle the American question, and the present Liberal one could not do otherwise than endeavor to ac-

complish that much-desired object. Each belligerent had heretofore been tampered with to treat separately, but a common interest held them firm to their purpose to negotiate only for a general pacification. Soon after Conway offered his resolution in the Commons, a friend of Shelburne's, when returning to England from Italy, called upon Franklin, who at his request gave him a letter to that nobleman, congratulating him upon the returning good spirit manifested in Parliament. After he became secretary of state, Shelburne replied, introducing semi-officially Mr. Oswald, who bore also recommendations from Henry Laurens, then a prisoner in London. Thus, in the beginning, the negotiation unfortunately fell into the hands of the secretary least willing to accord entire independence to the Americans. All parties, however, being desirous of an adjustment of the difficulties, the present opening was assiduously worked with a view to peace, Oswald passing repeatedly between London and Paris, determining the place and time of meeting for a settlement. These preparatory arrangements were made with the full concurrence of the British cabinet; but, the business having now assumed a definite shape, it became necessary that a more formal character should be given to it.

In the division of the offices, Fox had been assigned that of foreign secretary of state; while Shelburne

was made secretary of state for the colonies. It thus happened that the beginning of the negotiation with America properly fell under the latter's supervision. When, however, she was to be treated with as a foreign nation, and the proposed adjustment was to be for a general peace, it was obvious that it should rest in the hands of Fox. That gentleman, who had been a little impatient of what seemed his associate's intrusion in the matter, now gladly assumed its charge, and, with the approval of the cabinet, appointed Thomas Grenville minister plenipotentiary, who accordingly made his appearance at the French capital in the early part of May. Oswald had arrived from London four days before; and, though his duties were limited to arranging the preliminaries for a conference, his conduct was such that a shrewd statesman like Franklin did not fail to discover that two adverse interests were at work in the English cabinet. When Grenville's commission reached Paris, it was found to authorize him to negotiate only with France, the enabling Act to treat with America not having as yet passed the great seal. Further powers were, therefore, requisite before proceeding; and while waiting for these, and the arrival of Jay, he assured Franklin that America would be acknowledged as independent, but that, at the same time, she must be truly so, and have "no secret, tacit, or ostensible connection with France."

Shelburne had unwillingly surrendered the management of a treaty which he fancied he had auspiciously inaugurated. Oswald's apparent duties had already been performed; yet his patron, with the king's concurrence, contrived to have him remain at Paris until ordered to return home. During an early interview, the doctor had suggested to him the policy of Great Britain's ceding to the United States the entire Province of Canada, and, at his request, had loaned him, for the prime minister's perusal, a paper embodying some views on the subject. Oswald subsequently gave him reason to believe that this plan was favorably entertained; though, as it turned out, it had never been submitted to the Cabinet. He exhibited a memorandum of the earl's respecting the terms of peace, and, speaking as one having authority, impressed Franklin as a man of simplicity and honesty. The latter wrote, "Grenville seems to think the whole negotiation committed to him, and to have no idea of Oswald's being concerned in it. I apprehend difficulties if both are employed." Such soon arose.

Shelburne had written to Franklin that he was willing to invest his agent with any commission that they two, after conferring, should deem proper; and, since the doctor preferred to negotiate with Oswald, Grenville, to his chagrin, soon discovered, on the part of the American, an indisposition to meet his

advances. No wonder that the worthy doctor was perplexed at the cross-purposes of England's representatives, and inclined, at times, to doubt the sincerity of both. Grenville grew suspicious of Oswald's tampering with the negotiation; and, the clew once obtained, what was termed "this duplicity of conduct" on the part of Shelburne was laid bare. Fox was disconcerted and annoyed at what he deemed the treachery of his associate, but, as the chief of the cabinet was then on his death-bed, found himself unable to apply any corrective. The second commission sent to Grenville authorized him to treat with the King of France, "and any other Prince or State." Franklin objected to this form, as it could not be supposed to include a people who were not yet recognized by England as "a State." Upon being advised of this barrier to the negotiation, Fox, of a frank and open nature, wrote to his envoy, "I hope you will hear from us again very soon, with authority to offer independence as unconditional as you could wish." To carry out this desire, he proposed to the cabinet that he should be authorized to prepare the necessary instructions; but, in the absence of Rockingham, this was refused. That nobleman died the following day, after holding office little more than three months. His death rendered a re-organization of the cabinet necessary; and Shelburne, whose conduct as minister, if not inspired by the king, had yet

received his approval, was placed at the head of the new administration. He agreed with his master, that as little as possible was to be conceded; overlooking the essential fact that independence was already achieved, and that they were chaffering as though an acknowledgment of an existing thing would be fatal to the minister's political existence. How far they succeeded in gaining their ends, remains to be related.

When the consideration of further instructions to those who were to treat for peace came before the Continental Congress, a committee was appointed for their preparation. They turned out to be substantially those of Morris, already adopted, except as modified by the French ambassador, who was consulted as to the proper basis of settlement. The commissioners were ordered "to undertake nothing without the knowledge and concurrence" of the French cabinet. As, however, their allies wished to control the negotiation, and not simply to concur in what the respective ministers might decide upon, a further evidence of submissiveness was demanded. At Lucerne's suggestion, another sentence was added, "and will ultimately govern yourself by their advice and opinion," thus subjecting them to French dictation, and making the king master of the terms of peace. Massachusetts, before the war, had been extensively engaged in the Newfoundland fisheries;

and, fearing that this interest might be sacrificed, she required her delegates to insist upon its being secured in the proposed treaty. Congress, therefore, directed Franklin to inform his most Christian majesty that they were determined not to depart from their previous resolution, "by which all the objects of their desires and expectations were eventually submitted to his counsel;" but, to satisfy the New-England States, it was requested that a share in the fisheries should have a place among these "desires." It was further resolved that this was not to be given up without the concurrence of all the States. We shall see later how France betrayed the confidence thus reposed. The instructions, as "improved," placed the American commission entirely in her hands, save in one point, — which proved the most important, — they were, under no circumstances, to yield the question of a direct acknowledgment of independence by Great Britain. The mode of doing this was left to their discretion as influenced by the condition of affairs at the time of the negotiation.

When his appointment as a peace commissioner reached Jay at Madrid, accompanied by these instructions, he earnestly protested against the requirement "to be absolutely governed by the advice and opinion of the servants of another sovereign," and entreated Congress to release him from a station where he

"must receive the directions of those on whom no American minister should be dependent." However much the members may have been affected by his patriotic sentiments, or have deplored their blindness in permitting French intrigues to place their commissioner in a position of subserviency, they were yet unable to recede without causing offence, so quietly ignored Jay's request to be relieved. He therefore, in response to Franklin's summons, reached Paris, June 23, 1782, prepared to participate in the approaching settlement. On Aug. 7, Oswald wrote, after an interview with him, "He is a man of good sense, of frank, easy, and polite manners. Although he has lived till now an English subject, he may be supposed as much alienated from any particular regard for England as if he had never heard of it in his life. I sincerely trust I may be mistaken; but I think it proper to make the remark, as Mr. Jay is Dr. Franklin's only colleague, and being a much younger man, and bred to the law, will, of course, have a great share of the business assigned to his care."

Grenville had been even more annoyed and disgusted than Fox at Shelburne's management, and withdrew from the stage against the wishes of the ministry, and the earnest protest of his brother, Lord Temple. The new cabinet being installed, Fitzherbert was appointed on the part of England to adjust matters with the other powers, and Oswald author-

ized to treat for peace with the agents of "the thirteen colonies or plantations" as soon as his credentials should have been prepared. Jay, alive, as usual, to the dignity of the country he represented, objected to negotiating with him on these terms; but as he and Franklin were required to be governed by the advice of the French ministry, they waited upon its chief to obtain his opinion before the document in question should have reached Paris. Vergennes, in the interview which followed, decided in favor of their proceeding under the expected power; care, he said, being taken, after the adjustment had been made, to insert an article securing independence. He thought that England's recognition, instead of preceding, should, as a logical consequence, follow, the treaty, and offered a variety of reasons in support of this view, enforced by the examples of Holland and other countries. This satisfied Franklin, who, being appealed to, said that the proposed commission to Oswald "would do." He had always received the utmost kindness and personal consideration from the court at Versailles, and was accustomed to consult its minister on all occasions of doubt. Hence, while entirely loyal to his country, and desirous of promoting her welfare, he was inclined to close his eyes to a danger which Jay, perhaps, magnified, owing to the belief that the failure of his Spanish mission was largely due to French intrigues.

He feared, that, unless the United States were first placed in a position of independence, the war might be prolonged for other interests, but, this once conceded in the commission, Great Britain would be precluded from further claims to sovereignty, and America at liberty to treat with other nations, even should the present negotiation fail of its purpose. Her independence admitted, and her other conditions accepted, duty would not require her to continue the war for the attainment of Spanish objects. He thought that France did not wish her to be recognized without having first used her as an instrument to bring Spain to moderate terms of settlement. In no other way could he account for advice so opposed to the dignity of his country, sustained as it was by arguments which Vergennes himself had too much understanding not to perceive to be entirely fallacious. In a second interview, the French premier gave the same grounds for entering upon the negotiation, and notified the commissioners that the plenipotentiaries of the other powers were awaiting their action. Convinced of the wisdom of his own course, Jay declared that America needed no validity from Great Britain to make her independence effective, and that, provided the latter would treat with her on the same footing of equality as with other nations, he would rest satisfied.

His situation had become one of great delicacy.

He was engaged in a negotiation heretofore managed solely by a person in whose integrity, judgment, and patriotism he had always had implicit confidence; but he saw that Franklin was swayed by the French minister, and disposed to listen to advice which to him seemed fraught with injurious consequences. On reflection, he became more and more confirmed in the belief that France wished to exercise to the fullest extent that control over the proposed treaty with which Congress had unwisely vested her, and that she intended, if possible, to stay an explicit acknowledgment of independence until her own ends should have been attained. Two of his associates on the commission were yet to arrive, and there was no one in Paris of whom he could seek counsel. His youth inclined him to defer to his older colleague, whose knowledge of mankind, and long experience in diplomacy, entitled him to the greatest respect. Besides, the instructions required that the French minister should be consulted, and his advice followed; but his expressed opinion was decidedly adverse to the conclusion that Jay had reached.

His suspicion of ulterior designs was strengthened by the information that the count had taken pains to notify the court of St. James that *he* deemed Oswald's commission to be all-sufficient. About the same time that this news reached him, there was placed in his hands an intercepted despatch from a

French representative at Philadelphia, written while the preparation of the later instructions were still before Congress, recommending to France a policy on the fishery question inconsistent with a cordial alliance of the two nations. Believing that no agent would dare express views which did not conform to those of his court, Jay resolved to guard against the machinations of Vergennes, by positively declining to negotiate with England, except upon equal terms. He therefore urged on Oswald his inability to treat on any other condition, pointed out that it was of advantage to Britain that her late colonies should be free from the control of France, as they were determined to be from the mother country, and declared that he would have no concern in any negotiation in which they were not dealt with as an independent power. As he asserted, the United States, under the credentials that Oswald was to receive, could not be considered as such before the conclusion of the treaty, and, until that time, must be regarded as colonies. Convinced by his reasoning, and satisfied that he could not be moved from the position, the British agent despatched a messenger to London for the new commission which the two Americans had in conjunction prepared.

After a hurried interview with D'Aranda, Rayneval, the confidential assistant of Vergennes, secretly departed for the same place, with the purpose,

as Jay supposed, of forwarding Spanish interests at the expense of American, of ascertaining if, in the proposed treaty, a division of the fisheries between England and France, to the exclusion of America, were practicable, and impressing upon the cabinet that it was not necessary to alter Oswald's credentials in the manner required. Whatever may have been Vergennes' object, his envoy failed of its accomplishment. On learning the departure of Rayneval, Jay at once despatched Vaughn to London, to counteract his proceedings, and to assure the Government that the first step to making friends of those it could not subdue, was to inspire confidence by treating with them on an equal footing. The moment was critical, and immediate peace was essential for the preservation of the ministry. Ireland threatened an outbreak; and the earl had failed to draw to the support of his administration either Fox or North, those statesmen soon forming their unnatural and ill-starred coalition. Under these circumstances, he reluctantly but gracefully yielded to the representations of Vaughn; and his agent at Paris was thereupon authorized to treat with THE UNITED STATES OF AMERICA, thus admitting their independence and an entire separation of the countries.

Less than three months before, Shelburne, when assuming office, had promised the king to oppose

recognition, and had recently declared in Parliament that it would cause the sun of England's glory to set forever. Yet he was now forced to submit to an overwhelming public sentiment. This point once conceded, he was not unwilling to grant liberal terms, hoping thereby to detach America from France.

The new commission reached Oswald on Sept. 27; and, under it, negotiation soon commenced. The main difficulty having been overcome, the Newfoundland fisheries and the adjustment of the boundaries became the important American issues; the debts due her subjects, and compensation for losses sustained by the Loyalists, those of Great Britain. Some trouble arose in arranging the boundaries, the British envoy insisting that the Ohio should be the western limit. To this suggestion, the commissioners, quoting the king's charters, would not listen; and the matter was finally settled by extending the territory of the United States to the Mississippi River. This left nothing to be desired at the West. During the discussion, an effort was made to restrict the American fisheries to narrow bounds. They had, before the war, given employment to large numbers; and the project was resisted with great firmness and pertinacity. Adams, who arrived late in October, by his familiarity with the subject, proved a valuable coadjutor in sustaining the arguments of his associates. He demanded a full participation in them,

asserting that the early voyagers had first discovered and used them, and that now, when a division of the empire was to be made, a share in all of them should belong to his country, and declared, that, if occupation and possession, if war, blood, and treasure, gave such a right, America owned it. He pressed this view of the case with great ability; and an agreement was at last reached, by which the right to take fish should continue to belong to the people of the United States wherever it had heretofore been exercised by them. The claim thus recognized was absolute and permanent, and not, like that of France, contingent upon treaty stipulations.[1] Great Britain,

[1] The third article of the Treaty of Paris is as follows: "It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank and all the other banks of Newfoundland, and also in the Gulf of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish; and also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island), and also on the coasts, bays, and creeks of all other of his Britannic Majesty's dominions in America; and that the American fishermen shall have the liberty to dry and cure fish in any of the unsettled bays, harbors, and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but, so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without a previous agreement with the inhabitants, proprietors, or possessors of the ground."

The above clause, establishing the absolute right of America to participate in all the fisheries, was evidently drawn by Adams. His son, thirty-six years later, while secretary of state, in a treaty then negotiated, permitted a change

to her credit, persisted in requiring the restoration of property to the Loyalists; but, as its confiscation had been decreed by the separate States, the commissioners were debarred from acquiescing. Franklin was, however, aroused, and read to Oswald the orders of the English generals in Carolina, not only confiscating, but actually selling, the property of all patriots within the State. The asperities engendered by the recent contest had not subsided; and it was too well remembered that the advice of the Tories had induced the British Government to persevere in its coercive measures, for them to receive consideration at the hands of their countrymen. After all other questions had been adjusted, this came near wrecking the negotiation. The ministry feared to meet Parliament without some provision having been made for this suffering class. At the last moment, when every expedient seemed to have been suggested to overcome the dilemma, the Americans proposed inserting an article recommending the several States to restore all confiscated property not already condemned; and this salvo to England's honor was accepted by her plenipotentiary, with the concurrence of Fitzherbert and Strachey, whom he had been directed to consult in matters of doubt. The

in the phraseology, whereby, instead of a vested right, it became a concession on the part of England. This gave rise to the difficulties which have since ensued from time to time.

debts of individuals incurred before the war were protected by a clause, that no lawful impediment to their collection should be interposed by either country. Every thing being thus happily arranged, Jay, at Franklin's request, prepared the document for subscription. Vergennes said, when the treaty was submitted to him, that it had been purchased rather than made, and that Britain's concessions exceeded all that he could have believed possible. It was to become operative only upon the conclusion of a general peace, yet was signed at once; the commissioners, doubtless, wishing to close the door, and prevent the other powers, then negotiating, from bartering away the rights of their country.

No treaty entered into by America has exercised a greater influence upon her future destiny. She obtained every thing she could rightfully claim. By it she broke through the barrier of the Alleghanies, and removed all obstacles to her onward march to imperial greatness. Gerard had written that ages would elapse before she could play a part in the world's affairs; but D'Aranda, with truer political foresight, wrote to his sovereign, "The Federal Republic is born a pygmy. A day will come when it will be a giant." It was a mortal blow to the prevailing colonial monopoly, and established the right of every people to frame its own system of government. Great Britain made the old mistake of underrating

her progeny, and intrusted her interests to a former merchant and army-contractor, unversed in affairs of state. It was his fortune to encounter those, who, by their talents, zeal, and wisdom, were qualified to meet, in diplomacy, the most profound statesmen of Europe. The edifice which had been erected by Vergennes with so much labor and cunning strategy, failed of its purpose; and, with the execution of the preliminaries, the United States became emancipated from French control on the one hand, as from British authority on the other. As has been seen, the commissioners disobeyed the instructions of Congress, and proceeded without consulting Vergennes. Franklin, who had thought Jay misjudged the motives of that statesman, finally co-operated in preventing his country's welfare from being made subservient to that of another power.

To Jay is to be assigned a very large share of the honor of securing this treaty. To his prescience in detecting the secret designs of Vergennes, his firmness in refusing to treat without a pre-acknowledgment of independence, the confidence with which he inspired Shelburne, and won him over to his views, America is in a great measure indebted for the victory achieved over her recent ally, but then determined opponent. He had written before to the secretary at home, "You will never see my name to a bad peace, nor one that does not leave us the

fisheries," and had carried out his intention of procuring honorable and satisfactory terms for his country. Fitzherbert, the British envoy, declared that it was solely through his means that the negotiation was brought to a successful termination, and wrote Shelburne that he "always appeared to judge with much candor and consistency the true interest and policy of his country." Adams said that his was the principal merit, and that the title of "the Washington of negotiation" properly belonged to him. When the provisions became known, Hamilton wrote to him, "The people of New England talk of making you an annual fish-offering." More gratifying, however, than other plaudits, was the greeting of his devoted wife. She had witnessed his labors, anxieties, and cares at both Madrid and Paris, and now wrote, "I congratulate you once more as a deliverer of our country, as well as an affectionate and tender husband." On the other hand, the secretary of foreign affairs, while approving the conditions, said, "I feel no little pain at the distrust manifested in the management of it, particularly in signing it without communicating it to the court of Versailles." It went no farther than settling the question of independence, arranging the boundaries, and adjusting the rights of the respective countries in the Newfoundland fisheries. Had the commissioners tried to include other subjects, the negotiation would have

been indefinitely prolonged, and perhaps have proved a failure. They were therefore wisely deferred, to be embraced in a definitive treaty then contemplated, but which failed of accomplishing any thing more than the present one.

XIII.

FRENCH INTRIGUES.

AS Jay's distrust of France at the time of the negotiation is thought by Sparks and other writers to have proceeded from "an unfounded jealousy," and to reflect unjustly on a loyal and generous ally, it is proper to review the circumstances, and see whether his discernment did not lead him to form a correct estimate of the intentions of her government. He never at any time doubted its determination to continue hostilities with England until she had relinquished her hold upon the colonies, but he believed that she favored the pretensions of Spain at the West at the expense of America, that she aimed to exclude the latter from any participation in the Newfoundland fisheries, that she intrigued to control the peace negotiations, and endeavored to keep back, for her own purposes, Britain's acknowledgment of independence. Let us see how far his judgment has been sustained by later revelations.

Before an outbreak had actually occurred, the attention of the French cabinet was drawn to the disturbed

condition of the colonies, and the question of extending assistance thoroughly discussed. The king and Vergennes were favorable to this policy should the quarrel develop into hostilities. In the progress of events, an alliance had been formed for the assumed purpose of maintaining the sovereignty and independence of the States. While framing this treaty, France had in no wise tried to extort from their necessities any especial advantages for herself; and her subsequent contributions of men, material, and money were liberal, timely, and effective. As Vergennes wrote, "We have exacted nothing of the Americans which they cannot give in common to all the nations of Europe."

While assenting to the general correctness of this statement, and admitting that she was entitled to the warm gratitude of America, we may fairly assume that the motives of France in forming the alliance were not altogether disinterested, but that she simply embraced the opportunity of reducing the power of an imperious rival, who had lately wrested extensive provinces from her. History teaches that the conduct of nations is not regulated by the highest morality, but that self-interest is the ordinary rule of action. It was hardly to be expected, that under the *ancien régime*, when a noble descent of four generations was essential to become an officer in her army, that France, possessing colonies of her own, would en-

gage in hostilities for the benevolent purpose of aiding a community of republicans in arms against their sovereign. That she was impelled by her own objects is clear from the king's declaration when allying himself with them. Replying to Britain's manifesto, he said that he embarked in the contest because his safety, the welfare of his people, invariable policy, and, above all, the secret projects of the court of London, imperatively laid him under the necessity. The "secret projects" alluded to, were North's efforts at conciliation and a peaceful re-union of the empire, which he inferred would menace France. Again, in the same document, he proceeds to say, that, in treating with America, "it was with no other view than to put an end to the predominant power which England abused in every quarter of the globe." Vergennes' instructions to Gerard when starting on his mission, adds still another motive: he said "its permanent union with France had been the king's object."

Spain, as we have seen, claimed the entire control of the Mississippi, aspired to wrest Florida from England, and conquer and retain all lands lying west of the Ohio. This last she afterward insisted her troops had partially accomplished. France, by the treaty with Spain of April, 1779, had stipulated to conclude no peace without Gibraltar having been first restored; and, we have reason to suppose, to

induce her to embark in the war, had also held out the hope of assistance in these other designs. The United States claimed jurisdiction to the Mississippi, and a joint right to its navigation above the thirty-ninth parallel. By the treaty of alliance, France had guaranteed the American territory, without defining its extent; and her engagements with the two powers therefore necessarily conflicted. The political connection between the cabinets of Versailles and Madrid had been intimate from the time that Louis XIV. placed his grandson upon the Spanish throne; and in the present dilemma the former sided with Spain, probably supposing that honor and policy alike forbade them deserting an old and tried friend in the interest of their new allies. When the instructions to the commissioners were being prepared, Gerard notified Congress that the territory of the United States extended no farther west than the limit to which settlements had been permitted; and when Jay reached Paris, Vergennes, after verbally and in writing denying the justice of the American claims in that direction, and advocating those of Spain, placed the matter in the hands of his confidential secretary, whose carefully prepared memorial, contesting the rights of the United States, and his strenuous and officious efforts to press the negotiation with D'Aranda, attest that the minister was not at fault in the selection of his agent. Jay correctly supposed that the latter's pro-

ject for a new boundary had been inspired by his chief. Had America accepted his construction, she would thereby have been deprived of all territory north of the Ohio, together with parts of Kentucky, Tennessee, Alabama, and Mississippi. In short, from the preparation of the envoy's early instructions by Congress to the time of his leaving Europe to return home, there was, on the part of the French cabinet, an active, continuous, and frequently obtrusive support of the Spanish pretensions against those of the United States.

With respect to the Mississippi. Knowing the sentiments which prevailed at Versailles, Montmorin, the French ambassador, had early written to Vergennes from Madrid that "his most Christian majesty could not afford his Catholic majesty a greater proof of attachment than by employing his influence to divert their (America's) views from the navigation of the Mississippi." The influence sought was exercised. Gerard, who left the French Department of Foreign Affairs to become minister to the United States, informed Congress that their country had no right to its navigation, as she possessed no territory adjoining any part of it, and endeavored to obtain a sight of Jay's instructions when returning to Europe with him, but failing in this, tried to persuade him that the abandonment by his country of all claims to the use of the river for its entire length was requisite

to a successful accomplishment of his mission. The premier wrote to Lucerne, his successor, "It behooves the Congress to be categorically explicit on this point, and to declare that the United States put forward no pretension on that score, i.e., the Mississippi, and will be content to request the gracious countenance of the king of Spain, as far as his interest will permit him to grant it."

Looking upon the fisheries as a training-school for seamen, the courts of Versailles and St. James alike jealously guarded their respective rights therein. The American demand to participate in them was early known to Vergennes, who was not unwilling that an enterprising people, situated near by, should be precluded from making their country a naval power. He thus wrote to Lucerne, "Fishing along the coast of Newfoundland, Canada, etc., belongs exclusively to the English. The Americans have absolutely no claim thereto; and if we do enjoy it in certain places, it is not in virtue of a common right, but of treaties which have expressly reserved us the privilege." When Jay's original instructions were prepared, this question possessed no immediate importance; and Gerard, familiar with his recent course in Congress, and consequent unpopularity in the Eastern States, may have thought, that, when called upon to act, he would not heartily support their particular interest. The later directions to him,

when being prepared, aroused that section of the country; and after an earnest discussion, it was determined, as before stated, not to make the fisheries an ultimatum in the approaching negotiation, but to form no treaty yielding the point without the consent of all the States. Marbois, the French *chargé* at Philadelphia, advised Vergennes to have the king "express his surprise at this assumption on the part of Congress" "that they set forth their pretensions without paying regard to the king's rights," and to declare "that their pretensions are not well founded." Rayneval, in Paris, also contested the claim to the ocean-fisheries, and advised the commissioners, in the proposed treaty, to be satisfied with those along the coast. We now perceive that the agents of France abroad, and under-secretaries at home, on all occasions held the same official language as the ministry they served. Adams viewed the conduct of France in the same light as Jay, and once, when Oswald objected to Americans curing fish on shore, wrote in his diary, "I could not help observing that these ideas appeared to come piping hot from Versailles."

It is evident that France regarded with disfavor any participation of her allies in the deep-sea fisheries, and would have debarred them from it could this have been accomplished without exposing her purpose, and thus causing a disruption of the ami-

cable relation between the countries. The fisheries and the Mississippi navigation furnish a key to her attitude prior to and during the negotiation. Spain needed her assistance at Gibraltar and the West, and she wanted the aid of that power in excluding America from the Newfoundland fisheries, and therefore desired to keep the matter of independence in abeyance until a satisfactory settlement of these questions should have been reached. Hence the pressure of her cabinet to have Jay treat with D'Aranda, and the commissioners with Oswald, under the latter's defective authority. The policy of France had always been, to have the secondary powers of Europe dependent upon her; and while she had embarked in the contest with the intention of severing the British Empire, she was not unwilling to have America revolve as her satellite, rather than assume the place of a fixed star in the political firmament. With this view, Vergennes had desired "that each State shall ratify the treaties concluded with France by a separate Act, because in this manner each will be bound to us separately, whatever may be the fate of the Confederacy." He had reason to hope that its trade would gravitate toward those who had befriended the colonies when in adversity; and it was, therefore, essential that his ulterior aims should not be made manifest. The negotiation of the other powers

hinged upon the recognition of independence; and as soon as the commissioners, by disregarding their instructions, had freed themselves from French control, England's necessity placed them at a decided advantage. None of the ministers of other nations could proceed with their business until this preliminary had been settled. This done, the object of the alliance was secured, and the United States had no further interest in continuing hostilities.

The mistake generally made in discussing this question, is in assuming that the document borne by Rayneval embraced the whole purpose of his mission to England. The secret designs were too important to be intrusted to any one not standing in the closest relations to his chief; and Vergennes knew his business too well to expose on paper, projects, which, now that Britain had agreed to concede independence in some shape, would, if divulged, inevitably drive America into the arms of that kingdom. Neither the written instructions, nor the note submitted to the English ministry by him, contained any thing that made it necessary to despatch a confidential assistant to deliver, — nothing that required the hasty presence of D'Aranda at Versailles for consultation before Rayneval's departure, nor which justified the profound secrecy and mystery surrounding the entire proceeding, obliging the agent to travel under an assumed name. It is clear that other ends were in

view, which were doubtless, as Jay suspected, to intimate to Shelburne that Vergennes did not sustain the American demand for pre-recognition; to sound him about the two powers excluding the United States from participation in the fisheries, and to ascertain how far he was prepared to support Spain in her pretensions at the West.

Divining the feelings of the French cabinet, the foreign secretary wrote from London, "I have reason to believe that even the independency of America would not be agreeable to her (France), as the bond between them would thereby be loosened before the conclusion of peace." The *mode* of declaring it was the point to be determined, the thing which was either to render it truly effective, and place America on high vantage-ground, or, on the other hand, keep her negotiation with England subservient to Spanish and French interests; yet Rayneval said in his note, "As the independence of America is a thing agreed upon, no remark need be made on that subject." Does not this language imply that the commissioners would not be sustained by their ally in demanding a preceding acknowledgment? And again, with regard to the Newfoundland fisheries: "This matter has been treated discursively with Mr. Fitzherbert at Paris. If the ideas which have been proposed to him are judged impracticable, I am persuaded they will be weighed with equity at

Versailles." In other words, the American pretensions were not well founded, and his most Christian majesty did not mean to support them. We now know from Mr. Fitzherbert himself what those "ideas" were. He says that "Vergennes insisted on the expediency of a concert of measures between France and England for the purpose of excluding the American States from the fisheries." What the French court deemed "equitable" may be inferred from the despatch of Marbois already quoted, and Rayneval's own avowal that "the American views should not extend beyond a coast-fishery." Shelburne had in his possession at the moment, a letter from Oswald at Paris, saying, "The French court evidently wish the colonies might not be satisfied;" and his lordship's papers show that during the interview with him, Rayneval "expressed a strong opinion against the American claim to the Newfoundland fisheries." He would doubtless have been more explicit, and have laid open the entire purposes of his court, had not Jay's reasoning convinced the premier that it was "the interest of Britain to render us as independent of France as we are resolved to be of Britain;" and the cabinet had already determined to clothe its minister at Paris with such powers as would prove satisfactory to the American negotiators.

Jay's inflexible attitude in refusing to treat with

the Spanish or English envoys without an exhibit of proper credentials, induced Vergennes to despatch his secretary to London; and his disappointment at not being able to dictate the terms of the subsequent peace was manifested in a querulous letter to Franklin, saying, "You have concluded your preliminary articles without any communication between us. The instructions provided that nothing should be done without the participation of the king." The consequence of his controlling American diplomacy as was desired, would, doubtless, have been similar to the experience of Holland at the same time. The Dutch envoy was directed to make confidential communications to Vergennes; and, as he wrote, "I left things to him, depending on his word, and at last found myself his dupe."

Some further illustration of the conduct of France is afforded by the instruction given to Genet by her revolutionary government. "At the very time that the good people of America expressed their gratitude in the most feeling manner, and gave us every proof of their friendship, Vergennes and Montmorin thought that it was right for France to hinder the United States from taking the political stability of which they were capable, because they would soon acquire a strength which it is possible they would be eager to abuse." We are not aware that any special occasion is here alluded to, the reference, doubtless,

being to the general policy pursued by those ministers; but the following sentence is more pregnant and germane to the period under review: "The same duplicity was employed in the negotiation for peace." These expressions indicate the feeling prevalent in the French cabinet down to the Revolution of 1789.

By the execution of the preliminary articles, America was introduced as an independent power into the family of nations. She was under no engagements except with France and Holland. Her commissioners were clothed with authority to negotiate a definitive treaty, and adjust commercial intercourse, with the mother country. The first was signed the following September, being a simple transcript of the preliminary. Each country seemed disposed to meet the other in a liberal spirit, but their altered position necessarily involved some changes. The cherished navigation law affected America in a manner she had never before experienced, and England was unwilling to permit her enfranchised subjects the same freedom of trade as before the separation. Discussion on these and kindred points was prolonged, the latter power growing more and more indifferent as she found the incapacity of the Confederation enabled her to enjoy an unrestricted traffic with the late colonies, without

the necessity of conceding any privileges in return. Their commercial relations, therefore, remained undefined and unsettled, leaving room for the raids of the future Lords Nelson and Collingwood upon America's West-India shipping, thereby supplying another argument for a closer union of the States.

During the negotiation, Paris was the centre of interest to the whole world; and, after Adams and Laurens arrived, its American colony swelled in numbers, and the Hotel of "*La Belle Américaine*" became a favorite resort. The city was never more gay and brilliant than at this period. The genius of Neckar had provided for the necessities of government, and seemed able to promote prosperity in the midst of an exhaustive war. The queen, then in the meridian of her beauty, was graceful, popular, and almost justified Burke's florid description of her appearance. Concerning this unfortunate princess, Mrs. Jay wrote, "She is so handsome, and her manners are so engaging, that I was ever ready, while in her presence, to declare her born to be a queen; and I cannot but admire her resolution to superintend the education of her daughter." The scandal of the diamond necklace had not then arisen to poison her happiness; and though men were listening, the prelude was not yet heard of the hurricane soon to devastate the aristocratic circles of the country.

Aside from sickness, the time spent in Paris by

Jay and his wife was extremely agreeable after their long and unhappy sojourn at Madrid. Another daughter came to replace the one lost while at that capital, and they were so situated as to hear frequently from their numerous friends at home. Their associations with Franklin were cordial and intimate, and they participated in the intellectual society which had gathered round him. The work of the Encyclopedists was done, and they were passing away. Voltaire had been dead some few years. Diderot had returned from Russia, and, with D'Alembert, was, in a short time, to meet that death, which, he said, was "but a quarter of an hour's suffering, without consequence and without injury." They had sown the wind. A generation was entering the field of political and natural science, which, in a brief period, was to reap the whirlwind. Religion, with Jay, was no vague sentiment, but was ingrafted in his whole character; and no man could be more appropriately styled a Christian statesman. Hence the rampant infidelity pervading the higher classes of France was a source of pain and annoyance to him. "I was at a large party," he says in one of his letters, "of which were several of that description. They spoke freely and contemptuously of religion. In the course of conversation, one of them asked me if I believed in Christ. I answered that I *did*, and that I thanked God that I did." Nothing further passed on the subject.

His health had become such as to cause anxiety on the part of his friends; and he determined to try the waters of Bath before returning to Madrid, and adjusting his long-delayed treaty with the Spanish Government. After drinking them for some time, with decided benefit, he changed his purpose, and concluded, now that peace was restored, to withdraw from public life, and resume the practice of law in his native city. He was, however, unable to leave Europe before the following July, when, after an absence of five years, he reached America. His arrival at home was hailed with the greatest enthusiasm by all classes of his fellow-citizens. Whig and Tory, for the time, joined to do honor to one who had so largely aided in restoring peace to their country. The mayor and corporation voiced the public sentiment, and presented him with an address of welcome enclosed in a gold box, together with the freedom of the city. The address said, "You have executed the important trusts committed to you with wisdom, firmness, and integrity, and have acquired universal applause." Nor was this encomium undeserved.

He must have been greatly impressed by the altered aspect of the metropolis since leaving it eight years before. The British had evacuated the previous November, but it still bore evidence of their long occupation. The desolating course of the great fire

could be traced by blackened ruins, and many of the churches and public buildings which had been used as barracks were unfit for service. The population was much reduced by Tory emigration; while the adherents of the king who still remained, and the promoters of independence, had, as yet, hardly learned to bury the past, and unite in starting the city once more on its destined career of commercial greatness.

If its outward appearance had thus changed, he must have found other changes equally striking in the political condition of the country, as well as among his friends and early companions. His father and mother had both died. The lieutenant-governor and the judges, before whom he had pleaded as a young man, were fugitives from their native land; and their places were occupied by his own relatives and personal friends. His *Alma Mater*, which had been turned into a hospital by the military, now sought endowment and reconstruction under republican auspices. Duane, his former associate in Congress, governed the city, and held a court, wherein Hamilton, Burr, Edward Livingston, and a new generation of lawyers, were qualifying themselves to appear later before that august tribunal, over which it was soon Jay's destiny to preside.

De Tocqueville says that revolutions sweep away the causes that engender them, but seldom prove profitable to the generation which makes them; and,

in the present case, the return of peace had not brought with it that degree of prosperity so generally anticipated. The outward pressure which kept the States united, having been removed, selfish interests tended to drive them apart. They had yielded to the central authority a portion of freedom for safety, and would now resume it. Pownall had proclaimed that America would shift the world's political centre of gravity; yet, for want of cohesion among the States, she was without weight in Europe. Jay's experience at home and abroad taught him the cause of the disease, and the proper remedy to be applied. He had largely aided in throwing off the British yoke, and it now became his "first wish to see the United States assume and merit the character of a great nation. Until this is done," he said, "the chain which holds us together will be too feeble to bear much opposition." Thenceforth his correspondence teemed with the necessity of a closer union; and the sequel will show how far he assisted in bringing about the consummation that he hoped for, and so earnestly desired.

XIV.

SECRETARY OF FOREIGN AFFAIRS.

BEFORE returning home, Jay had declared that if the country needed his services, he would give them ; and recent proceedings on the part of Congress called upon him speedily to determine this point. Ere the preliminaries had been settled at Paris, Livingston resigned his position as secretary of foreign affairs, but remained in office until peace was fully secured, when he withdrew, leaving it without a head. Many attempts were made to fill the vacancy, all of which failed, owing to the difficulty of making a suitable choice. Having learned in May that Jay would soon return, the appointment was, without loss of time, conferred upon him, causing him not a little embarrassment upon his arrival the following summer. Though it seemed his duty to accept the proffered honor, his own affairs, and those of his clients, heretofore neglected, called for immediate attention. Congress had already adjourned. The next session was to be held at Trenton ; and as secretary, it would be necessary for him to reside per-

manently in that city, and attend daily upon its meetings. While the subject was under consideration, his own State again elected him one of her delegates. As this would require but a small part of his time, he adjusted more pressing business, and proceeded to Trenton one month after Congress had convened. That body, which had dwindled down to a small number, soon had before it the question of a permanent place for the seat of the General Government, and, after a prolonged discussion, decided on the banks of the Delaware as the proposed site, and authorized the erection of buildings for the accommodation of the executive departments. Trenton was pronounced by the members inconvenient, and it was therefore resolved that they should meanwhile assemble in the city of New York. This seemed to remove his main objection; and, having been empowered to choose his subordinates, he was at once inducted into office. No more fortunate selection could have been made. The soundness of his judgment, diplomatic experience, knowledge of European cabinets, inflexible resolution, and high moral character, fitted him to deal with all questions likely to come before the department over which he was to preside.

The year 1785 opened with the city of New York as the temporary seat of the American government; Congress having met at that place in January, with Jay as its organ of communication with all domestic

and foreign bodies. This position was unquestionably the most responsible and influential under the Confederation. Its functions were important and varied. The secretary had to prepare plans of treaties with other nations, was expected to attend the meetings of Congress, and take its opinion on matters of moment, and was not unfrequently called upon to make reports involving laborious investigation, while at the same time he conducted an extensive correspondence with the agents and representatives of the country abroad. When Jay assumed charge of the office, it had been without a chief for two years; and in consequence its current business was greatly in arrear, and its affairs generally in a state of confusion. Its labors had been largely increased by the late settlement, which opened the United States to the whole world. Commercial and other treaties were being negotiated; and, as they were concluded, ministers and consuls had to be appointed. The inconvenient form of confederated government rendered the duties of the secretary unusually burdensome. He had at all times to consult a numerous body upon the proper course to be pursued, and frequently to exhibit the documents he had drawn up before despatching them. Congress sat with closed doors, and he was generally present to furnish members with any information required. He was systematic, and brought to his charge talents of a high

order. As a distinguished mark of confidence, he was soon authorized to open all official letters, and for a limited time to inspect in the post-office any private ones from which he thought advantageous information might be derived. Such inquisitorial proceeding was, however, so little in accordance with his sense of propriety, that it is believed he never exercised the right. The papers which he prepared during his secretaryship evince a determination to base the diplomacy of the country upon principles of rectitude and impartiality. They also indicate entire familiarity with the law of nations, and a knowledge of the intricacies of European politics. The position of the country that he represented being now assured, they manifest a dignified self-reliance sometimes wanting in his earlier productions of the kind; while in force of argument, and literary ability, they are hardly surpassed by those from the polished pen of his immediate successor. The French minister could now write to Vergennes, "The political importance of Mr. Jay increases daily. Congress seems to me to be guided only by his directions; and it is as difficult to obtain any thing without the co-operation of that minister, as to bring about the rejection of a measure proposed by him. . . . I cannot deny that there are few men in America better able to fill the place that he occupies. The veneration with which he has inspired almost all members of Congress, proves, more than

any thing else, that even the jealousy inseparable from the American character has not prevailed against him, and that he is as prudent in his conduct as he is firm and resolute in his political principles and in his coolness towards France." In this last he was at fault. Jay thus summed up his rule of action with regard to foreign powers: "Treating them all with justice and kindness, and preserving that self-respect which forbids our yielding to the influence or policy of any of them."

As the recognized head of the Government, he was required to entertain the representatives of European nations, as well as distinguished strangers visiting the country. At least one ceremonial dinner and one drawing-room were given by him each week. On these occasions he was greatly assisted by his wife, whose womanly tact and large experience abroad enabled her to do the honors of the house with becoming dignity. From persons who were present at these receptions, we learn that he wore a suit of simple black, was pleasing in his manners, kind, affable, and unassuming. Mrs. Jay was richly dressed, and in good taste, observing the most rigid formalities in her intercourse with foreign diplomatists and their wives.

When, by the preliminaries, Great Britain had recognized the Mississippi as the western boundary of the United States, without reference to Spain's pre-

tensions to the eastern bank of that river, Lafayette wrote that umbrage was taken by the court of Madrid. During a subsequent visit made to that place, his spirited representation induced its long-delayed reccognition of the newly born Western power; and in the spring of 1785, Gardoqui, who had been deputed for the purpose, opened correspondence with the American secretary at New York. While in Paris, Jay had induced D'Aranda to state Spain's claim, which, besides the exclusive navigation of the Mississippi, was found to include all the territory west of a line drawn from the Flint in Georgia to the confluence of the Ohio and Kanawha Rivers. It had, however, been enlarged; for by the treaty with England, signed a few months later, she had acquired the peninsula of Florida, and now asserted that her domain extended as far north as that part of the Western country which she had formerly demanded.

The secretary was directed in the negotiation to stipulate for all territorial rights of the United States, and on no account to yield the navigation of the Mississippi for its entire length. He responded that he entertained the same sentiments on these points as when ambassador to Madrid, and was, therefore, in full accord with this position. The discussion began with this ultimatum on the part of the United States. Jay was soon satisfied that while Spain might yield somewhat in the matter of bound-

aries, she was fully determined to debar other nations from the use of the river, and that she had instructed her minister in the negotiation to give precedence to this question over all others. The discussion was soon brought to a stand-still. He thereupon suggested to Congress that he should be authorized to enter into a treaty of limited duration, by which America, without receding from her position, should agree not to navigate the river below her own boundaries, postponing other subjects until a more energetic government — then in prospect — should have been installed, and settlements have grown onward to the frontier. Though not the Spain of Charles and Philip, it must be remembered that that country was still much more than the shadow of a mighty name which she soon became under Godoy the "Prince of Peace;" that she had been disappointed in not obtaining Gibraltar, and was, in consequence, embittered; that her people were spirited, and her power of aggressive warfare great. America, on the other hand, having just emerged from a prolonged contest, was relatively weak; and continued peace seemed necessary to the adjustment of her finances, and the establishment of her new political institutions. She had, moreover, no assurance that France would think her guaranty covered these claims, but, on the contrary, good reason to suppose that she would feel bound, as heretofore, to support those of Spain. Time was an

important element for the country, and the course suggested by Jay seemed the most advisable to be pursued. Its proposal, however, excited distrust in Congress; and Madison, overlooking the fact that Virginia had but a few years before directed her delegates to yield the navigation of the Mississippi, now professed to think that American interests would suffer in the hands of the very agent to whom the reservation was due, and sought to have the negotiation transferred to Madrid, and intrusted to the management of his friend, Mr. Jefferson, then minister to France. This idea, it is needless to say, was not entertained.

Jay reported that he was convinced that his countrymen had a good claim to the use of the river from its source through to the ocean; and unless an accommodation should take place, "the dignity of the United States, and their duty to assert and maintain their rights, render it proper for them to insist on this right, complain of its violation, and demanding in a temperate and inoffensive, but, at the same time, a firm and decided manner, that Spain shall cease in future to hinder our citizens from freely navigating the river. In case of refusal, it will be proper for the United States to declare war against Spain." The committee to whom this report was referred, determined in view of the Philadelphia Convention, that no further steps in the negotiation should be taken;

and the question was bequeathed as a legacy to the new government. In the mean while, emigration Westward was swelling to large proportions. Intruders upon the disputed territory were driven off or punished by Spanish officials, who, it was said, incited the Indians to acts of hostility against the settlers. Rumors getting abroad that Congress proposed yielding to Spain's pretensions, the hardy yeomen of the West, instigated by emissaries from revolutionary France, threatened to take matters into their own hands, sweep down the Mississippi, and drive the Spaniard into the Gulf. The curtain was rising upon Europe's great drama; a National Government was established at home; and, though war seemed at times impending, the administration of Washington succeeded in adjusting the difficulties, until, a little later, the prompt diplomacy of Jefferson happily settled them in a manner not then anticipated by either nation.

With Jay rested in a great measure the executive power of the Union, and experience more and more satisfied him that the Articles of Confederation were entirely inadequate for a country with such large and varied interests. His official duties required that he should demand from England a withdrawal from the Western ports that she continued to hold, as well as compensation for the slaves carried away by her troops; while, at the same time, he was made painfully

aware that Congress was powerless to enforce upon its constituents a compliance with the provisions of the treaty he had framed. His public papers and private correspondence during this period testify to his earnest desire to have an energetic government substituted for the weak Confederacy he was serving. He could not believe "such a variety of circumstances have combined almost miraculously to make us a nation for transient and unimportant purposes," and thought "no time is to be lost in raising and maintaining a national spirit," became "daily more and more convinced that the Constitution of the Federal Government was radically wrong," and "that power to govern the Confederacy for general purposes should be given." Nor was he alone in viewing the situation as full of peril. His solicitude was shared by Washington, Hamilton, and others who had endured the cares and anxieties of the war, hoping thereby to promote the welfare of the country. The Articles had barely subserved the design of their creation, and were unfitted for a condition of peace. States, which, during the recent contest, had stood side by side, now waged commercial warfare on each other. Public bankruptcy had already occurred, and private bankruptcy seemed about to follow. A centrifugal force was at work. The sections were flying apart, and virtue was rapidly disappearing from among the people. Under these

circumstances, any change must be an improvement. By the exertion of those who had been watching the drift, a remedy was happily sought in a closer union. This had won independence, and could alone secure it. Simultaneously with the negotiation between America and Spain, a convention of delegates from all the States, except Rhode Island, was held at Philadelphia. In it were men of eminent ability, probity, and experience, who had studied the political system of other nations, and were thoroughly qualified for the grave and important duty before them. Some of them, doubting their authority to go farther, wanted to patch up the Confederation; while others, with a truer conception, were determined on framing a national Constitution adapted to the necessities of the country; one which should combine freedom with stability, the union of all with the right of each separate State, and practically proclaim as a cardinal principle the sovereignty of the people heretofore in abeyance. On Sept. 17 the new Constitution was presented to the world. While doing so, Washington said, "In all our deliberations we have kept steadily in our view that which appears to us the greatest interest of every true American, — the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence."

The present organization of the Government seems

so natural, that one is apt to presume the several members fell into the situation without any difficulty. On the contrary, the process was a slow one. Nations are created by events; and, though the seed was sown, it required years for a truly national sentiment to grow up among the people. The exigencies of the times had, in 1643, brought the Eastern Colonies into league, and later the home authorities recommended a concert of measures against the common enemy. This, perhaps, directed their attention to the advantages of closer alliance, which were made more manifest by the Committees of Correspondence calling forth mutual sympathy, and producing harmonious action. The severance of political connection with Britain was, it is true, the joint act of "the people" of all the colonies; but there was nothing in the Declaration itself to indicate that they intended to form themselves into a body politic. This, however, necessarily followed; and the subsequent treaty conceded independence to the whole United States, embracing a far greater extent of territory than the original charters called for. No weighty consideration had been given to Franklin's plan of Union when laid before the Congress of 1775; nor was the proposal of New England heeded five years later, that the relations of the States to each other should be adjusted in a more solid and permanent manner. Throughout the Revolutionary struggle, there was dis-

played, in many of them, an aversion to a closer connection, and to having more energy conferred on the central power. The Articles of Confederation, though a long step in advance, simply created a grand council, depending upon thirteen different authorities to give effect to its resolves. It formed "a perpetual union," but developed little of the spirit of nationality. This last was fostered by the territorial expansion of the country, and, though repressed by the restrictive measures of President Jefferson, became an active, living sentiment after the second contest with Britain.

After an arduous session of four months, the result of the Convention was to be submitted for approval to assemblies elected by the people of each State. Much diversity of opinion had been manifested in that body, and unanimity was secured only by concession and compromise. The larger States yielded their preponderating influence in the Senate; the planting ones the importation of slaves after a brief period, and were, in return, protected by the rendition of fugitives from labor, and a partial representation in Congress of their negro population, all of them surrendering to the National Government nearly every attribute of sovereignty. It remained to be seen whether those who were to pass judgment upon the work would be actuated by the same spirit of conciliation that had been displayed at Philadelphia,

and a more perfect and closer union obtained. It soon became the absorbing theme; and, in some sections, speakers rode from county to county, discussing the propriety of its adoption. Jay firmly believed that the people are the source of all just authority; and, because the State Legislatures intervened, he had objected to the recent convention, suggesting, instead, that citizens of the separate States should elect deputies to one authorized to prepare, and at once inaugurate, a constitution for the whole country. Washington, who anxiously sought the opinions of others in order to arrive at a correct conclusion for himself, after a lengthened correspondence, thus sums up those of Jay: "He does not promise himself any thing very desirable from any change which does not divide the sovereignty into its proper departments. Let Congress legislate; let others execute; let others judge. Proposes a governor-general, limited in his prerogative and duration; that Congress should be divided into an upper and lower House, — the former appointed for life, the latter annually; that the governor-general should act with the advice of a council formed for that *only* purpose, the great judicial officers to have a negative on his acts. The more power granted the Government, the better, the States retaining only so much as may be necessary for domestic purposes; and all the principal officers, civil and military, being commissioned

and removed by the National Government." These were Jay's theoretical views at the time, of what a constitution for the United States ought to be; yet when the one framed at Philadelphia was placed before the country, he at once threw them aside, and gave it an earnest, cordial, and effective support.

With the idea of forming and guiding public opinion, he, with Hamilton and Madison, addressed the people in a series of papers, commenting upon the proposed instrument, and advocating its adoption. Guizot said of these essays, that, in the application of the elementary principles of government to practical administration, they were the greatest work known to him. Talleyrand strongly recommended them; while Chancellor Kent thought them equally admirable for their wisdom, patriotism, candor, simplicity, and elegance. Jay's contributions, however, were small, being from the second to the fifth number inclusive, and one other near the close of the series. In the first four, he aimed to exhibit the advantage heretofore derived from a union of the States, and to point out the danger likely to be incurred from a separation. In the last, he reviewed the powers that were delegated to the General Government. It had been intended that he should participate largely in the preparation of the papers, but an unfortunate accident prevented his doing so. Upon his recovery, he published an address to the citizens of New York,

in which, while not directly advocating the proposed plan, as was already done, he endeavored to show the small probability of a better one being secured, the manifest impolicy, and even danger, attending its rejection, thereby permitting the country to remain in its disorganized condition. The composition of this address displayed the eminently practical character of his mind, and the study he had given the subject. The opposition to the adoption of the Constitution in the Empire State, led by Governor Clinton, was powerful in numbers, ability, and influence; and in the severe party struggle which ensued, intense heat was evolved. Her extent, population, wealth, and geographical situation conferred upon New York the ability to become an independent commonwealth; and the governor, with many of the citizens, was unwilling that she should descend from this supremacy, and place herself on a level with her smaller sisters at the East. Two of her delegates to Philadelphia had withdrawn from the Convention; and the third signed the Constitution, not that it met his full approval, but because the condition of affairs demanded a change, and the present plan was the best attainable.

Public duties had required Jay's presence at the seat of government while the general convention was being held. He was now, without a dissenting voice, elected by his fellow-citizens a member of the one

authorized to express the judgment of the State upon its labors. The canvass for seats was warm and active; and when it assembled, it was found that out of sixty-five delegates, the friends of the new system had elected but nineteen, — truly a discouraging prospect.

The State Convention met at Poughkeepsie on June 17, and was organized by the selection of Clinton as its presiding officer. The discussion was opened by Chancellor Livingston's showing the great necessity of union to the States, and declaring that the Articles of Confederation had not maintained domestic peace, supported credit, nor promoted commerce, and that they should therefore be abandoned. He was followed by Hamilton, who recommended to the members a calm and considerate examination of the instrument before them. While Jay participated in the deliberations of the body, and by his weight of character exercised a decided influence over its proceedings, he made but a single elaborate speech. This was in reply to Smith, who had disapproved of the small number of representatives assigned to the new Congress, as affording an opportunity of their being corrupted. He dwelt therein upon the importance of a union to the prosperity and happiness of the people; admitted objections to the proposed plan, but contended that the number of members would be found adequate to all the purposes of the federal gov-

ernment; demonstrated that there was more facility for corruption in the present Congress than there could possibly be under the Constitution, and that they would in time be found sufficiently numerous to please the most jealous advocate for liberty. He closed by expressing the wish that the delegates might return to their homes with the consciousness of having earnestly sought the truth, and done their duty. The younger Hamilton says, "The speech was delivered in his quiet, limpid style, without gesture." Such we should suppose to have been the case. Jay was not impassioned. Appealing to reason, he was unable to impress others with a fervor that he did not himself feel. All of his addresses are void of sentences which, spoken at critical moments, decide the fate of great questions. It was provided that the Constitution should go into operation when ratified by nine States. Eight had already signified their approval when the New-York Convention assembled, neither Virginia nor New Hampshire being of the number. Within one week they, too, ranged themselves beside the others, leaving the Union severed should New York fail to join them. This accession inspired the zeal of the friends of the Constitution. Jay wrote, "An idea has taken air that the southern part of the State will, at all events, adhere to union, and, if necessary to that end, seek a separation from the northern." The knowledge of this feeling prob-

ably discouraged the followers of Clinton. The convention came together, as we have seen, with the greater part of its members opposed to ratification; but by the unflagging efforts of Hamilton, Livingston, and Jay, combined with apprehension of the evils which would follow a rejection of the instrument, the number of votes required for its passage was secured; and on July 25, upon the motion of Jay, the question was determined by a majority of three. New York was thus preserved as the keystone to the Union, as she had been to the arch of independence; and it is safe to declare that the influence of no one of the three delegates above named could have been spared on this important occasion. Kent, who was present as a spectator, says, "There was no difficulty in deciding at once on which side of the House the superiority in debate existed; yet in the ordinary range of the discussion, it was found that the dignity, candor, and strength of Jay, the polished address and elegant erudition of Chancellor Livingston, the sagacity and exhaustless researches of Hamilton, were met with equal pretensions of their opponents." It is somewhat remarkable that during the debates by practical statesmen, no one pointed out the danger likely to arise from an equality of votes for the highest two offices, which a few years later shook the entire political structure to its foundation; nor that other defect whereby a House, two years after its

election, though not representing the prevailing sentiment, might be called upon to select a President for the United States.

The Constitution having been ratified, open opposition to it soon subsided. For a period, there was calm on the lately troubled waters, and all were disposed to extend to it a considerate support when the expected amendments should have been made. The imperfections of the present system had become so glaring, that men looked with hope to the future, satisfied that, even if they had not obtained what they wished, the new form of government was, at least, an improvement on the old. The quiet transfer which followed, of all administrative functions to an organization called into being by a simple majority of the citizens of each State, was an anomaly in the world's experience, and proved a happy augury for the success of the experiment.

Under every government where freedom of expression is tolerated, two parties are found, having their germs in the principles of human nature itself. Whatever character they may assume at particular junctures, the moving spirit of the one is the desire to limit, and that of the other to extend indefinitely, the control of the people. While conservatism and progress are the most important elements in their division, it does not follow that they will be kept in constant antagonism. Prejudice and self-seeking, personal

dislikes and love of change, among the members, control their movements. Many of the early emigrants had fled from oppression in Church and State, and, claiming the greatest liberty in their new sphere, scanned closely the proceedings of the home government, and contested every measure of the colonial authorities calculated to restrict their freedom. From the beginning of the Revolutionary contest, the people had displayed on all occasions an antipathy to a single national executive, and were only reconciled to it, in the new organic law, by its evident necessity, and the assurance that the trust was to be lodged in the hands of one who had voluntarily relinquished supreme military command to retire to the repose of private life. They still watched with jealousy an office they deemed closely related to royalty. Soon after Washington's inauguration, this feeling was further developed by the forms that were introduced at the executive mansion, although they were due to others rather than to its incumbent. An animated discussion took place in Congress respecting the appellation proper to bestow upon the chief magistrate, and the mode of intercourse between him and that body was manifestly imported from Britain. Washington always had great admiration for fine, blooded horses, and when at home had, like other gentlemen, indulged his taste by driving his coach and four, with liveried servants, over the rough roads of his native

Virginia. The same style, however, when displayed at Philadelphia, was thought to partake too much of the system that had been cast off; and the objection was not lessened when he started on his Eastern tour in this manner, accompanied by six negro servants, together with his public and private secretaries.

All written instruments — even the Scriptures themselves — are subject to diverse interpretations; and, as might be expected, as soon as legislation was entered upon under the Constitution, it was found that among members an honest difference existed as to its proper construction. These things did not tend to allay the public feeling of uneasiness. For the time being, however, the antagonism was inchoate awaiting further developments before it assumed the condition of an organized political opposition.

XV.

NATIONAL PARTIES.

WITH the installation of the new government, four executive departments were created, Jay remaining in that of State until the arrival of Jefferson, who had been appointed secretary. The others were filled by the nomination of Alexander Hamilton to the Treasury, Henry Knox to the War Department, and Edmund Randolph as attorney-general. All were young, their ages averaging less than forty years. The last named had been a delegate to Congress, governor of Virginia, and was a prominent member of the recent convention. In that body he had opposed an equality of the States in the Senate as well as a single executive. Knox had joined the army before Boston, served with honor throughout the Revolution, and was secretary at war under the Confederation.

Hamilton and Jefferson, the leaders in the cabinet, would have been men of mark in any country. They were in the prime of life; had already stamped their impress upon the institutions of

America, and were destined to become personally and politically antagonistic, marshalling the two great parties which were soon to contend for the government of the nation. The first named was a man of profound intellect, vigorous and versatile, self-sustained, decided and unyielding, with remarkable powers of investigation, grasping large principles, yet comprehending details; deeply read in Constitutional law, and drawing his inspiration from the well-springs of the past. The other possessed great mental activity, and knowledge of human nature; was sanguine, plausible, jealous, bold in speculation, and reasoned from theory rather than experience. Lacking robust courage, he often achieved his ends by indirect and devious means which his bolder rival would have scorned to use, the rather frankly avowing his purpose, and justifying its pursuit. Jefferson was unfitted to meet men in open debate, and soon aspired to higher office and greater honors; while his opponent, equally powerful with the tongue and pen, was satisfied with his elevated position and acknowledged influence.

Mr. Jefferson entered upon the duties of his department in the spring of 1790. He had been absent in France during the agitation attending the convention and the adoption of the Constitution; though it was understood that when amended, it met his approval. While lingering in Virginia upon

his return, he had carefully gauged public sentiment, and found that it was adverse to the pomp and ceremony by which the chief magistrate was surrounded, as well as to all measures calculated to increase the authority of the General Government at the expense of the several States. Hamilton's proposals for funding the national debts, and assuming those of the States, had been introduced into Congress two months before Jefferson's arrival in New York, and were at the time an absorbing theme in public journals and private assemblies. Knowing nothing about matters of finance, but finding that they had the concurrence of Washington, Jefferson gave them a tacit support; and after being coupled with a scheme for planting the permanent seat of Government on the banks of the Potomac, they passed both Houses during the summer, and received the signature of the President. It is fair to add that Jefferson always claimed that he had been deceived into giving them any countenance whatever; though he had resided at New York four months before they passed Congress, and, as he says politics were the chief topic, he must have heard them discussed in every social circle.

By the enactment of these laws, Hamilton's influence became supreme, to the manifest annoyance of Jefferson. The secretaryship of state was the first place in the cabinet, yet the secretary of the treas-

ury by this stroke had become the all-powerful minister. The financial arrangements precipitated the latent elements of opposition into an organized body which rapidly grew and expanded. It required a leader, and thenceforth Jefferson marshalled his forces with the skill of a military veteran. Wary, cool, untiring, in profound secrecy he laid plans to be carried out by subordinates, and endeavored by covert means to unite his friends, and sow distrust among opponents. As a press was needed, he called Freneau from New York, and pensioned him with an office to attack that Government whose servants they both were. He proceeded to enlist under the Republican, or Democratic, banner the young, ardent, and aspiring; all who had opposed the Constitution, together with those whom he could persuade that the Treasury was corrupting the country, and preparing it for the introduction of monarchy. As an evidence of this, he pointed to the trappings of royalty which had been introduced at the Presidential mansion, and to the assumption of State debts. On the other side were found most of those distinguished men who, either in the cabinet or field, had participated in the Revolution, with many bankers and merchants now enjoying an unusual degree of prosperity. Those, too, who had favored the adoption of the Constitution, became adherents of the administration, while by the

assumption of State debts, the possessors of these were made upholders of the Union. The financial measures of the secretary had resulted, as he perhaps hoped, in having individuals in all sections of the country interested in the stability of the Government, and therefore willing to support those intrusted with its management. Jay's conservative nature, past experience, friendship and intimate association with Washington, Ames, Schuyler, Hamilton, naturally led to his political identification with those whose principles he thought essential to the security and continued growth of America.

The two great parties thus organized were equally patriotic, and alike desired to maintain the Constitution, promote the advancement of the country, and increase the happiness of its citizens. They differed only as to the mode of attaining these ends, — the one thinking to do so by an energetic national government; the other by restricting its power, and reserving to the separate States a greater or less supervision over its proceedings. Some of the Federalists, when in the convention, would have preferred a stronger form of government than that adopted; yet, the Constitution once ratified, they were resolved that it should have a fair trial, though they entertained grave doubts as to its being the best fitted for the purpose intended. The federative principle of combining State and popular represen-

tation was a novelty in political science, and its efficacy was yet to be tested. Jay, after lending all his powers to obtain the adoption of the Constitution, thus expressed himself: "Whether any people can long govern themselves in an equal, uniform, and orderly manner, is a question of vital importance, whose solution can only be determined by experience." They had in youth been nurtured by the spirit of England's laws and literature, and, as it were, still breathed the atmosphere of her institutions. These last were of a more popular character than those of any other nation, and had always been held up before them as combining the largest degree of personal freedom to the subject, with extreme energy on the part of the central authority. Hence, while one party was inclined to give a narrow and contracted interpretation to the organic law of America, the other wished to assimilate its operation to that of Britain, and claimed for it a latitude which they deemed necessary for the object of its creation.

Experience has demonstrated that they both contributed to the national welfare during the period of universal agitation growing out of the French Revolution. Like the centripetal and centrifugal forces of the solar system, they preserved the nation in a state of comparative equilibrium, preventing on the one side its alliance with France, and on the other

its joining with Britain in her sanguinary contest with that country. Not the least fortunate or providential incident in the annals of America, is the fact that things had run their course, and a stable government been founded under a chief of sound judgment, moderation, and firmness, before the curtain rose upon the portentous and bloody drama enacted in France. The state of the country would have been deplorable had that stupendous event occurred during the weak and inefficient government of the Confederation. With little cohesion between the States, their citizens differing in character, interests, and pursuits, and split into factions, it would have proved an inviting field for the subtle diplomacy and military power of the belligerents, and many of them would doubtless have been remanded into that condition from which they had but lately emerged.

The opening scenes of the French Revolution were hailed with unbounded enthusiasm by all classes in the United States. Having recently established their own independence by the generous aid of that nation, their sympathy and good will were attracted by her efforts to remove the inequalities which weighed so heavily upon the freedom and prosperity of her subjects. Its farther progress, however, destroying the social organization, and producing a constitution which sprang not naturally nor developed gradually from the life and character

of the people, was well calculated to arrest the attention of the calm and more experienced statesmen of America. They knew that it was not possible for a body of theorists, however skilled, to form of themselves a system of government as a mechanic would construct a machine. Morris, an acute observer then on the spot, wrote to Washington in the summer, "The authority of the king and nobility is completely subdued, yet I tremble for the Constitution." When the movement had progressed still farther, royalty been abolished, and the guillotine installed in the seat of power, the Federal party lost all sympathy with it, and shrunk from countenancing the assassins who professed to be exponents of the national will.

Hamilton, who knew the condition of France only from association with her higher military officers, thus expressed himself: "When I perceive passion, tumult, and violence usurping the seat where reason and cool deliberation ought to preside, I acknowledge that I am glad to believe there is no resemblance between what was the cause of America and what is the cause of France; that the difference is not less great than between liberty and licentiousness. Would to Heaven that we could discover in French affairs the same decorum, the same dignity, the same solemnity, which distinguished the cause of American Independence!"

Jefferson, on the other hand, had resided in the country, was familiar with the nature of the French government, and counselled the early leaders in a manner hardly befitting an ambassador to the king. He saw nothing to condemn in the atrocious September massacres, save as they might bring discredit upon the "patriots." Said he, in speaking of them, "In the struggle which was necessary, many guilty persons fell without the form of trial, and with these some innocent. It was necessary to use the arm of the people, — a machine not quite so blind as balls and bombs, but blind to a certain degree." These were the sentiments of the Republican chief, and his followers took the same general view of the proceedings in Paris. The violence with which such opinions were expressed, naturally drove their adversaries to closer sympathy with English institutions. The proper interpretation to be given to the Constitution had heretofore been the dividing-line; but now a foreign element was introduced, which, carrying the country back to a semi-colonial dependence on Europe, widened the breach between the national parties of America. Henceforth the difference between them was more distinctly marked. In the selection of his first cabinet, Washington appears to have thought to conduct the government independent of either of them. If such was his expectation, he was undeceived before the close of one term.

The feeling by that time had become so violent that he had to choose their successors exclusively from those in entire sympathy with his own federal principles.

XVI.

CHIEF JUSTICE.

WHEN organizing the government, Washington's attention was naturally drawn to the eminent abilities and distinguished services of Mr. Jay; and he manifested his appreciation by tendering him any cabinet position he might select. He, however, wrote to the President on another occasion, that there was no public station which he would prefer to that of chief justice of the Supreme Court. His earlier studies, the judicial character of his mind, his familiarity with the principles underlying American institutions, combined with the experience required while presiding over the highest tribunal of his native State, peculiarly fitted him to discharge the functions of this dignified and important office. The Act of Congress establishing it was signed in the autumn of 1789; and he was the same day nominated its chief, with five associates, one for each circuit, it being required that two terms of the Supreme Court should be held each year.

Jay was forty-four years of age when he took his seat upon the bench. He is described as somewhat under middle height, with a person well formed, though rather thin, and "in his manner combining the affability of the gentleman with the dignity of the statesman." His health had been restored; and with a vigorous, well-balanced mind, and great power of endurance, he conscientiously performed the duties appertaining to the position. He assumed the traditionary gown of the English judges, but discarded the solemn wig so intimately connected in the public mind with the features of Somers, Mansfield, and Pratt, choosing rather to wear his hair off the forehead, and tied behind in a cue. The face beneath indicated strength; and

> "Deep on his front engraven
> Deliberation sat."

As was well said by one who knew him, "When the ermine of the judicial robe fell on John Jay, it touched nothing less spotless than itself."

In a letter enclosing his commission, Washington embraced the occasion to express the singular pleasure he felt in addressing him as the head of "that department which must be considered as the keystone of our political fabric." In this he did not magnify its scope; as no tribunal is so august in its functions, nor possesses the same extended jurisdic-

tion. In foreign countries, the judiciary forms no part of the political system, its business being confined to the interpretation and application of the laws in cases of dispute between individuals. To the other branches of the American Government belong those duties, which have been, from time to time, expressly imposed with the Constitutional limitations. This court, as its title implies, is not only empowered to arbitrate between the States, but to review, and even nullify, the Acts of the supreme legislature itself, when they contravene the organic law which it is intended to protect from covert or open assault. At that time, the path to be pursued was untrodden: the bounds of its authority were to be accurately ascertained and mapped out, while questions touching the powers of Congress and the relations of the States to each other and to the central government were to be determined. Jay wanted the latter endowed with ability to resist their encroachments. He had realized by his own experience that the Articles of Confederation were inadequate for such a nation as the future promised, and was too well aware that their most striking defect was the absence of any judicial body to interpret and enforce the laws, not to assert for the tribunal over which he presided, the utmost power conferred upon it. It was therefore to be expected that fault would be found with its early decisions. Regarding

the United States as supreme within its boundaries, they were marked by what may be deemed an extreme Federal bias. For the first time, the States felt that they were controlled by superior authority, and, like a newly bridled horse, were restive and impatient. A question soon arose which afforded Jay the opportunity to vindicate the independence of the court, and gave assurance, that, in his hands, it would be preserved from trespass by co-ordinate departments. It had been enacted that all applications for pensions should be passed upon by the Circuit Court, with the right of appeal to an executive officer of the United States. The chief justice, with his associates, pronounced the law unconstitutional upon the ground that no duties, other than judicial, could be laid upon them, nor a revisionary power granted over their proceedings. Congress wisely accepted this decision as final, and, recognizing their supremacy as the expounders of the Constitution, repealed the Act at the following session.

The first term of the Supreme Court was held in the city of New York, in the spring of 1790, when its organization was effected, and its officers appointed. At the succeeding February term, attorneys and counsellors were admitted; but, unlike its sessions at the present time, there were no cases upon the trial-docket. On April 4, 1790, the first circuit was held, when Jay delivered his charge to

the grand jury. We have already alluded to the circumstances under which, as head of the State Judiciary, he had addressed a similar body at Kingston. The struggle in which the country was then engaged had been brought to a close, her independence was acknowledged, and a national government instituted. Its successful operation would largely depend upon his interpretation of its powers; and it therefore must have been with great emotion, and a deep sense of responsibility, that he entered upon his duties, and proclaimed that justice and good faith were to be his guide in the solution of all public as well as private controversies. Law founded on religion was the staple of his argument. On this basis alone, he thought, could rational liberty be built. "Let it be remembered," he said, "that civil liberty consists, not in the right for every man to do just what he pleases, but it consists in an equal right for all citizens to have, enjoy, and do in peace and security, and without molestation, whatever the equal and Constitutional laws of the country admit to be consistent with the public good."

At another circuit held in the city, the chief justice presiding, the first case involving a Constitutional question was decided; and the earliest opinion filed in the Supreme Court was one in favor of the State of Georgia, by the tenor of which she was

granted an injunction to stay the payment to others of a debt which she had confiscated. This suit is chiefly remarkable as being the only one in which a special trial by jury has been had in that court. The most important case while Jay sat upon the bench, was an action instituted in 1792, by a citizen of South Carolina, against the State of Georgia. It was novel in character, and had to be determined, not by precedent and legal authorities, but by the great principles of justice and Constitutional law. It turned upon the question whether a State, being sovereign, could be sued in the Federal Tribunals by an individual. After the service of the writ, the attorneys, on the part of Georgia, presented a protest, denying the jurisdiction of the court, and, under instructions from the governor, declined taking any further part in the proceedings. The case was held under advisement for two weeks, when four of the five judges each delivered an able and elaborate opinion, sustaining the right of a citizen to sue a State of the Union. The chief justice drew the distinction between a sovereignty, where the power is vested in a single person, and a State, where it is lodged in an aggregate of individuals. It was admitted, he said, that a State possessed the power to sue a citizen, and why, therefore, could not a man sue his fellows in the aggregate? The Constitution gave the court jurisdiction over controversies be-

tween a State and citizens of another State, and in no respect indicated who was to be plaintiff and who defendant. Surely, while enabling a State to become a plaintiff, it in no wise debarred it from being made a defendant, in a suit brought, it might be, by the same individual. He then asked, was it to enjoy the high privilege of acting wrongfully, without control? He deemed the construction wise, honest, and useful, as the most obscure citizen would thus not be left without the means of obtaining justice, which was the same, whether due one man from a million, or a million from a single person. When delivering the opinion, he said, "The prostration of State rights is no object with me. I remain in perfect confidence, that with the power which the people and Legislatures of the States indirectly hold over almost every movement of the National Government, the State need not fear an assault from bold ambition, or any approaches of covert stratagem; nor would it be any degradation of their authority to submit to the supreme judiciary of the United States." [1]

The maxim that "the king can do no wrong," is sound in Constitutional law; for, being the supreme authority, there is no court competent to take cognizance of an action against him; and if there were, it could not enforce its decisions, as the head of a

[1] See Appendix B.

nation is not within reach of its tribunals. As Coke says, the king can arrest no man, for there is no remedy against him. The separate States did not, however, possess entire sovereignty. Some of its attributes had been conceded at the time of the Confederation, and so many more for the purpose of forming "a more perfect union," that it was a question whether they could of themselves exercise any sovereign powers whatever. Indeed, all those claimed for them by Jefferson in the Declaration, had in express terms been conferred upon the National Government. The Supreme Court has authority to issue writs of execution against one State to satisfy a judgment obtained by another; and in becoming amenable to those issued for the benefit of a private citizen, the dignity of a State would be no further compromised. The court may even now wrest from its possession an individual held in contravention of his rights as a citizen of the United States, but the sufferer under a Constitutional amendment has no means of redress for the injury to person or property that he may have sustained from the States.

It is true that Hamilton in "The Federalist" had promulgated a different opinion; but that of the court was strongly upheld by the attorney-general, who was a strenuous advocate for State rights, and had refused to sign the Constitution at Philadelphia

because of its alleged defect on that head. Speaking of Georgia's denial of jurisdiction, he said, "This brings into question a Constitutional right supported by my own convictions: to surrender it, in me, would be official perjury." Suits of a similar nature had been instituted before against both New York and Maryland; yet the announcement of the present decision aroused public attention, and was officially brought to the notice of several State Legislatures. Further proceedings in the case were postponed; but Georgia lost no time in openly defying the Federal authority, declaring any of its officers attempting to levy an execution within her borders, guilty of felony, and liable to capital punishment. Feeling in the State did not subside until her own interpretation of the Constitution had been embodied in an amendment. In consequence of this, the court in February, 1798, determined not to take further action in the matter. The capitalists of America have since had abundant reason to regret the adoption of this amendment; and it is clear that the reputation of some of the States would have been subserved, had Jay's construction been established as law, and the ability to enforce it sustained by public sentiment. The main, indeed the only, purpose in forming the Constitution, was "to establish justice;" and this object cannot be entirely accomplished while members of the Union are per-

mitted to disregard with impunity their engagements, and repudiate their solemn contracts. The United States have thought it not to comport with the honor of a great nation to wrong the meanest of her citizens, and has therefore opened all of her courts to those claiming she is their debtor. The dignity of the several States would in no wise be lowered were their creditors permitted to establish the justice of their claims in the same manner, reserving to the Legislatures the question of making the appropriation for their payment. While presiding over a circuit in the city of Richmond, it was officially brought to the notice of the chief justice, that Genet, the French minister, after landing at Charleston, had proceeded to equip privateers against English commerce, and had also compromised the country by erecting courts of admiralty within its bounds for the condemnation of their prizes. He thereupon instructed the grand jury to present all persons found guilty of violating the law of nations with respect to the belligerent powers, thus affirming, that, independent of any statute, the United-States courts possessed jurisdiction over such offences. Nor was he alone in the opinion. The same view was understood to be held by McKean of Pennsylvania, a stalwart Republican, and by the district judges of the United States, with the single exception of Chase of Maryland, a Federalist. Under the construction

that the law of nations formed part of the common law of the land, the counsel of Genoa at Philadelphia was tried, and found guilty of misdemeanor in sending anonymous and threatening letters to Hammond, the British minister; and an effort was also made to convict both Cobbett and Bache for libels against the ambassador of Spain. No decision adverse to that of the chief justice was given until 1798, when Judge Chase ruled to the contrary; and the question was definitely settled by the Supreme Court, determining that an infringement of international law when not embodied in a statute is not indictable in the Federal tribunals.

The case of Henfield, arrested at Hammond's request, aroused much attention. His prosecution was under the advice of the attorney-general, who held that such persons were subject to punishment as disturbers of the peace of the country. The defendant was admitted to have been a citizen of the United States while serving as an officer on board a vessel commissioned by Genet, which had been fitted out in America, and had captured and brought a British prize into the port of Philadelphia. The chief justice, who presided at the trial, charged, that, as the country was in a position of neutrality, those who aided either belligerent transgressed the common law. Notwithstanding this, the prisoner was acquitted upon the plea that the offence had

been committed in ignorance. Great sympathy was expressed for him, and the conduct of Jay was commented on with unusual severity. It was contended that Henfield's case was precisely similar to that of Lafayette, De Kalb, Steuben, and others, who left their own country to participate in the American struggle. This was unjust. The court did not deny the right of a citizen to expatriate himself, and enter the service of another nation; but, in the present affair, the vessel had been fitted out, manned, and commissioned in America, to cruise against the commerce of a nation with whom the country was at peace.

There was no law at the time on the statute-books, prohibiting proceedings like those in question; and in the absence of such, there is little doubt that Jay's ruling prevented hostilities with England. America professed neutrality as regarded the powers at war, and was bound by international law to prevent her ports from being used for the purpose of warring against the commerce of either of them. The distinguished jurisconsults who assembled at Geneva held that one nation is responsible for the material damage that another may sustain from a wrong originating within its jurisdiction, and said in the case of the "Alabama," "The British Government cannot justify itself for a failure of due diligence on the plea of inefficiency of the

legal means of action which it possesses."[1] Washington's sense of justice enabled him to anticipate this determination, when he declared that the United States ought to "effectuate the restoration of, or to make compensation for, prizes which shall have been made by privateers fitted out at their ports."

The last case that we shall notice was the very interesting one decided in the city of Richmond in 1793, in which the chief justice presided, assisted by Associate Iredell and the district judge. It was eloquently and exhaustively argued by the highest legal talent of the South, Patrick Henry and John Marshall appearing for the defendants, while Mr. Wickham, and others equally eminent, represented the plaintiffs. The verdict was to the effect that debts due to British subjects by citizens of Virginia should be paid, notwithstanding that the Acts of her assembly passed prior to the adoption of the Constitution prohibited their recovery.[2] Jay said the Revolution

[1] Before the Geneva Conference was held, the British and American Governments had settled upon the principle that "a neutral power is bound to use due diligence to prevent the fitting out, arming, or equipping within its jurisdiction of any vessel which it has reasonable ground to believe is intended to cruise, or carry on war, against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise, or to carry on war, as above; such vessel having been specially adapted in whole or in part within such jurisdiction to warlike use."

[2] In December, 1787, the State of Virginia passed an Act removing all restrictions to the collection of debts due to British subjects, provided the governor should first notify the State that the posts had been surrendered in

had not annulled the debt, though the amount had been paid into the State Treasury, and the court could take no cognizance of the breach of a treaty in bar without a declaration to that effect by Congress. This decision, overruling the proceedings of the State, and affecting many prominent persons in it, was a cause of great dissatisfaction, and proved a well-used weapon in the hands of those opposed to the national administration.

In accepting the Presidency, Washington assumed duties to which he had heretofore been a stranger. The Constitution was the chart by which he was to be guided, but its construction was not at all times clear; and, as was his wont on occasions of doubt, he conferred with those who shared his confidence. The members of what is now termed the cabinet, were equally divided in their interpretation, and the two leading minds hostile to each other. Under these circumstances, he naturally turned to Jay, who was frequently consulted as to the proper course to be pursued during the foreign complications then rife. His advice was also sought as to the nature of the reception to be accorded Citizen Genet, upon his arrival as the representative of the New French Republic, and afterwards upon the expediency of

conformity with the treaty, and that Great Britain "is taking measures for the further fulfilment of said treaty by delivering up the negroes belonging to citizens of this State."

issuing a proclamation of neutrality, and a suitable draft of such a paper requested at his hands. Washington also appealed to him from time to time, to suggest subjects to be brought forward for the consideration of Congress, and, when preparing his farewell address to the American people upon retiring from their service, privately submitted the sketch of that celebrated paper to him and Hamilton for revision. Jay's judicial language coincided in all cases with the neutral position of the Government, and was calculated to strengthen its hands; and one of his charges was published by it as indicative of its exposition of international law. The situation of foreign affairs was novel and perplexing to the President, who, fancying an analogy to the English Constitution, called upon the judges of the Supreme Court for an extra judicial opinion. This they declined giving, as "they felt themselves precluded from determining questions not presented to them in the regular course."

XVII.

CANDIDATE FOR GOVERNOR.

WE have now to narrate an episode in Jay's life which at the time gave rise to a very embittered feeling, and was the indirect cause of his final withdrawal from public service. As governor of New York, Clinton had for some time failed to satisfy a large number of his constituents. When he was first placed in that position, the State was overrun by the enemy; and an officer of boldness, energy, and decision was required for the emergency. Fourteen years had since passed; and an executive possessing the qualities of a statesman rather than those of a robust leader was now demanded, as well as one whose political opinions were in full accord with the administration of Washington. The task of his displacement had been undertaken by the Federal party three years before without success. The governor had numerous followers among the rural population of the State; and to accomplish his overthrow, it was necessary for his opponents to choose a candidate who would receive the cordial support of their

party-friends, and one whose fitness for the office would challenge that of the body of citizens, who under ordinary conditions determine an election.

The selection of a man combining these qualifications became a matter for careful consideration with the leaders of the opposition. The chief justice was generally regarded as the most available, but he had before declined the nomination; and his known aversion to personal and party warfare, with the exalted station that he occupied under the National Government, seemed to preclude all chance of his agreeing to enter the political arena. Gen. Schuyler,[1] and his son-in-law, Hamilton,[1] appear to have taken great interest in the question, the earlier proceedings being conducted under the most complete modern system. Jay's[1] consent to become a candidate was first wrung from him by these gentlemen, when, at a meeting of their friends, he was formally placed in nomination, and a committee appointed to wait upon him, who reported that "it would give him great satisfaction to serve his fellow-citizens in that office if honored with their suffrages." Clinton's[1] supporters had entered him in the lists the day before; and, meetings being held ratifying the nominations, the issue between them was fairly joined.

[1] These names afford a striking illustration of the diversity of race embodied in that of the American. Schuyler was of Dutch descent; Clinton Irish; Jay, French, and Hamilton, Scotch.

In an address to "the independent voters," Jay's committee said, "If a man of the most approved integrity, abilities, and patriotism, who has served you in various capacities at home and abroad, who was the principal framer of your State Constitution, and one of the chief agents in negotiating the treaty of peace with Great Britain, is worthy of your choice, come forward, and give your suffrage for him regardless of the frowns or opinions of any person. The man whose cause you will espouse is a citizen who has not only the ability, but continues the disposition, to render the most essential service to this State; and whose fame is not confined to the country that gave him birth, but has reached, and done honor to the American cause and character, in many parts of Europe."

The struggle between the opposing parties was very animated, and resulted in the election of Jay in the spring of 1792 by a considerable majority of the ballots cast; but the canvassers, mostly friends of Clinton, objected to accepting the votes of three counties which had been given for the Federal candidate. The Constitution required that the different sheriffs should be annually appointed by the governor and council; but, owing to various causes, this had not been uniformly done, and the practice had grown up for the old incumbents to continue performing official functions until their successors had qualified.

The interval was at times but a few days, and rarely a long period. The sheriff of Otsego County had declined a re-appointment; but, as the new officer did not make his appearance on the scene before the election, he discharged the duties on that occasion. This was assigned as a reason for discarding the returns from that county. The votes of Clinton and Oswego were also rejected, — the one because the returns had been despatched by an unsworn deputy-sheriff, and the other because the messenger bearing them was taken sick upon the road, and had intrusted them to another person for delivery to the secretary of state at Albany. It was shown that custom had sanctioned such proceedings, and that, if the votes of either two of the counties were admitted, the election of Jay was beyond cavil. Smith testified that he considered himself to be the sheriff of Otsego, and that he was in the daily practice of serving writs, and doing other business appertaining to the position. It was proven also that the sheriff of New York had once held office for six months after his commission had expired; while that of Orange, at the former election for governor, had returned the ballots after his term, thereby seating Clinton in the chair of state. There was no pretence that the disputed votes had not been honestly and legitimately given; and their rejection, therefore, made the voice of the minority override that of the

majority. Forms of procedure are established as a necessary incident to the main purpose of ascertaining in a fair and satisfactory manner the sentiment of the larger number, and the very foundation of Republican institutions is shaken when these are warped to defeat the expressed will of the people.

The political campaign had been conducted with extreme acrimony; and the hesitation of the canvassers, to ratify the choice of the citizens, excited a violent ferment throughout the State, and an angry discussion between the friends of the respective candidates. Some of the most eminent members of the bar in Philadelphia were consulted by either side; but the question of counting the suspended vote was, by agreement, finally submitted to the two New-York senators, — Aaron Burr and Rufus King; the one a supporter of the Republican party, the other a pronounced Federalist. After investigating the subject, the referees arrived at opposite conclusions. Burr, with legal acumen, rested his arguments upon the requirements of the Constitution, and was for having it literally observed; while King, looking to its spirit, preferred to protect the rights of those for whose benefit it had been framed, and have their evident intention carried into effect. The canvassers, thus compelled to choose between two opinions, diametrically opposed, determined, as a matter of course, to follow the one which accorded with the

political preferences of the majority, and, rejecting the returns from the three counties, by a vote of seven to four, declared Clinton to be legally elected. That gentleman was accordingly inducted into office. Upon the announcement of the result, great excitement was manifested on the part of the Federalists, the canvassers charged with corruption, and Clinton stigmatized as grasping authority rightfully belonging to another. The minority of the committee were not idle. They protested, and carried the matter before the Legislature at the following session. A large number of witnesses, *pro* and *con*, were then examined; and a discussion, lasting at intervals for many months, took place: but Clinton remained in the gubernatorial chair three years longer. The flagrant wrong inflicted upon the people, with the door to fraud thus opened, should the State authorities at any time neglect or refuse to appoint sheriffs in opposition counties, aroused universal indignation among Jay's partisans; and he was pressed by the more ardent to challenge the adverse decision, and assume the office — needful aid of every kind being assured.

He was holding a circuit at Bennington, pending the determination of the canvassers, and reached the State soon after its promulgation, to find the most intense feeling on the subject. He was met by friends and supporters, at the various towns through

which he passed, with addresses of welcome, and protests against the recent proceedings, as being "in contempt of the sacred voice of the people, in defiance of the Constitution, and in violation of the uniform practice and settled principles of law." He had been a passive spectator rather than an active participant in the late canvass, and now, while realizing the injustice done him, preserved a calm and dignified demeanor, counselling moderation on the part of all, with submission, and a strict obedience to the State law. Replying to the New-York address, he said, "In questions touching our Constitutional privileges, the social duties call upon us all to unite in discussing them with candor and temper, in deciding them with circumspection and impartiality, and in maintaining the equal rights of all, with constancy and fortitude." As he approached the city, he was received by a cavalcade of friends; and at a public dinner, given him a few days later, when he rose to retire, the entire company, as a mark of respect, adjourned, for the purpose of escorting him to his dwelling. His conciliatory course during the crisis, while elevating him in the estimation of his fellow-citizens, prevented any illegal ebullition of popular feeling; and the government of the State, under Clinton, proceeded without interruption for the remainder of the term.

XVIII.

RELATIONS WITH ENGLAND.

GREAT BRITAIN, in the articles of peace with her late colonies, had contracted to arrange the boundaries between their respective possessions, to vacate with convenient speed all territory belonging to them, and stipulated that her forces should neither carry off nor destroy private property on withdrawing from the country. The United States, on its part, agreed to earnestly recommend to the several States the restoration of sequestrated property, not already condemned, and to urge the removal of every impediment to British subjects collecting their debts from American citizens — the question of the mercantile interests of the two countries being left unsettled.

Supposing that a Confederation which had carried the States through a seven years' war had sufficient authority to regulate their intercourse with other nations, Pitt, with the concurrence of the Shelburne ministry, early introduced into the Commons a liberal bill, modifying the Navigation Act, and adjusting

commercial relations with America. It encountered the antagonism of Fox and most of his followers, though receiving the support of Burke in an able and statesman-like speech. Ere it had passed the House, the unnatural alliance between the Whigs and Tories was consummated, — a union of those who had endeavored to subjugate the colonies, with a party that had steadily denounced them as fit for the scaffold. Fox, with a characteristic lack of discretion, made the preliminaries at Paris the occasion for displacing the cabinet, and inducting his friends and new allies into office. The further consideration of Pitt's bill was necessarily postponed, the ministry pledging themselves to introduce a satisfactory measure of the kind. The famous East-India Bill was, however, the more pressing; and upon it the coalition was wrecked, leaving to their successors the task of conciliating America by carrying out the provisions of the late treaty.

Pitt had driven his adversaries from power by combining with the more liberal Tories, and the character of his administration was thereby modified. The large opposition majority in the Commons, when he assumed office, demanded his constant attention; nor until this was overcome, and his own India bill passed, could he turn his mind to other subjects. When the American question came again before him for consideration, he found a Confederacy

scarce strong enough to stand among the nations of Europe, too weak to protect itself against unfriendly legislation, unable to comply with its treaty stipulations, or to enforce them upon its recalcitrant members. Without revenue and without credit, a division of the States was predicted. Each was now bidding against her sisters for the commerce of the world, and England's merchants already possessed every advantage to be looked for from any treaty with them.

It was expected, that, with the restoration of peace, a traffic between the countries which had been mutually beneficial, would, with proper encouragement, revert in time to its old channels. America, however, had become a foreign power, and her citizens were not permitted the same freedom of trade with Great Britain as before the separation. It was still the age of prohibitory tariffs and colonial monopolies, and she was unable to impose contravening restrictions in self-defence. Before the war, the British West Indies obtained their necessary supplies from the settlements on the main-land; and since its close, a profitable interchange of products had again sprung up between the two. This was now interdicted by the naval authorities. Besides the constant irritation naturally growing out of the absence of any commercial arrangement, disputes arose from non-observance of the treaty negotiated

at Paris. Britain retained military posts within the American borders, on the plea that obstructions to the collection of debts had not been removed, and that recent action on the part of some of the States had rendered this even more difficult than before. America responded, that, upon the evacuation of the country, slaves and other property had been carried off by the British forces, and further asserted that Congress had fulfilled its engagements, and exhausted its power, when it recommended a repeal of all enactments conflicting with the requirements of the treaty.

After the dissolution of the commission at Paris, Adams, flushed with his successful diplomacy in Holland and France, sought the position of representative to the court of St. James, with the sanguine expectation of adjusting these matters, as well as negotiating a commercial treaty between the countries. His presentation to the king as the first minister from the late colonies was an interesting event in their annals, and the addresses of both actors on the occasion were singularly appropriate and commendable. Mr. Adams was evidently gratified with his part of the performance, and augured a successful result from his mission ; but no ambassador in return left England.

Jay had by this time been appointed secretary of foreign affairs; and he directed the minister to

insist that America should be put in possession of all posts within her borders, and instructed him to remonstrate against the infraction of the treaty in carrying off the negroes. While thus pressing the just demands of the United States, he was not blind to their delinquency. In a secret report he said, "Every State has passed laws impeding, delaying, or forbidding the collection of British debts," and that the rescinding of all such should be recommended, and Adams authorized to say that this article had been violated, but that measures were being taken to remove every cause of complaint. Congress accepted his conclusion, and gave the requisite advice to the States. A majority of them repealed their laws on the subject, and others were considering the matter when the new Constitution went into operation. With respect to the negroes, he reported that the title of the master had not been destroyed by their elopement with the troops; that Britain ought to be excused for carrying them away, provided she paid their full value, and he thought Congress might, with great propriety, insist upon this being done.

Notwithstanding the pleasing prospect which opened upon the early part of his mission, Adams in a few months became convinced of the utter hopelessness of accomplishing its object. Lord Shelburne in the Treaty of Paris had made liberal concessions,

expecting thereby to detach America from France. This, as was seen, had failed; and England was now disposed to recover, if possible, some of the territory then ceded, and confine the United States to the east of the Alleghanies. A re-action had set in; and the mother was completely estranged from the daughter, and indifferent to her advances. Fox and Burke, even if willing, were powerless to render any aid; and Pitt was no longer concerned about the relations between the countries. Jay wrote to Adams at the time of the Philadelphia convention, "Unblessed with an efficient government, destitute of funds, and without credit either at home or abroad, we shall be obliged to wait with patience for better days, or plunge into an unpopular and dangerous war, with very little prospect of terminating it by a peace either advantageous or glorious." To submit quietly to the present condition of things, was equally impossible; and the minister was therefore instructed "to protract the discussion, and thus avoid a categorical answer which would force upon the United States a profitless war." In truth, the position of Mr. Adams had become extremely humiliating. His remonstrances were unheeded by England: he was patronized by the French ambassador, and treated with cold civility by those of other powers. It is, therefore, not surprising that he was glad to escape from the perplexities of the situation, and

return home to bury himself, as he expressed it, in "the most insignificant office that ever the invention of man contrived, or his imagination conceived."

As soon as the new government was settled, Washington requested Gouverneur Morris, then in Europe, to sound the British ministry on the subject of a commercial treaty, and the adjustment of all questions between the two nations. Provided with the necessary credentials, that gentleman held several interviews with Pitt and his secretary of foreign affairs, but found them indisposed to any arrangement. He fancied, however, that they would be glad to have America sever her connection with France, and form an offensive and defensive alliance with their country; in other words, as a weak and second-rate power, place herself, like Portugal, under the protection of Great Britain. The only apparent result of Morris's embassy was the advent of Mr. Hammond at Philadelphia, and the appointment of Thomas Pinckney the following year to fill the place left vacant by Adams at the court of St. James. It would have been well for England if she had been more liberal and enlightened, and had met these advances in the same friendly spirit with which they were tendered. She might thereby have secured, at least, the moral support of a nation whose friendship she declined, and thus have prevented the growth of a sentiment in America which led to hostilities

between the countries, and was at last removed only by a conference in the city of Geneva.

The king having been executed, and a republic proclaimed in France, a war broke out between that country and Britain, destined to spread over every state in Europe, and be finally extinguished upon the field of Waterloo. The Federal leaders, as we have seen, had lost faith in the principles and capacity of the rulers of France, and naturally drifted towards her opponent; while the Republicans, looking on the bloody scenes enacted, as caused by the abuses of the Royal Government, sympathized with the efforts of their recent allies to establish liberal institutions. The interest of America imperatively demanded that she should stand aloof in the mighty struggle; and, when information of the war reached him, Washington, after profound deliberation, determined upon maintaining entire neutrality, and in pursuance of this purpose, in April, 1793, issued a proclamation forbidding its infringement. His cabinet was equally divided; and, as the chiefs of the two parties sat together at his council-board, it required all of the President's skill and personal influence to preserve harmony, and guide the ship of state in a steady course among the breakers. Each of the warring nations persisted in regarding the situation of America in a false light. Britain fancied the new government unwilling, or perhaps unable, as was the old, to afford

her redress; and France, assuming that the alliance between the countries pledged the United States to embark in her aggressive wars, proceeded to act as though this were admitted. Her masters apparently overlooked the fact that one of the parties to that compact had been obliterated, and that they themselves claimed the privilege of choosing which treaties of the old monarchy they would recognize, and which repudiate. No American can at the present time read unmoved an account of the treatment which his country experienced at the hands of the belligerents. It seemed to be the aim of both to force her into the contest by continual aggressions upon her rights as an independent power. All rules which in times of ordinary warfare protect neutral nations, were brushed aside. Privateers, bearing commissions from the French ambassador, sailed from American ports, and captured British shipping along the coast, even at times when the pilot was on board, and the vessel within sight of her destination. The cruisers of France, roaming the ocean, seized merchant-ships freighted with American produce; and Genet, supported by an intestine party, whose passions were artfully roused, insulted the President, telling him that he was "involved in a general conspiracy of tyrants against France," and that he had disregarded the laws of the Union. That minister employed counsel to defend American citizens

before the courts, when prosecuted for the infringement of neutrality; and the remonstrances of the Executive against his proceedings were unheeded until a threatened appeal from the Government to the people resulted in his recall, thus for a season relieving the authorities from their French annoyances.

England, which, like Rome, aspired to rule the world, proclaimed that she was fighting, not only for her own existence, but for the liberties of all mankind. While protesting against the French violation of neutrality, she haughtily declined to fulfil the stipulation of the Treaty of Paris, and retained the Western posts, thereby encouraging, if not inciting, the Indians to inroads upon the frontier settlements. American sailors in her seaports were liable to impressment whenever a fleet was to be manned, and the consuls at those places were continually called upon to effectuate their release; while vessels on the ocean were overhauled, their crew mustered, and the able seamen transferred to her men-of-war. Apparently with the purpose of driving the United-States' flag from the ocean, she interpolated the maritime code, gave a more stringent construction to the navigation laws, and enforced them with rigorous severity. Her cruisers, traversing every sea, captured, and sent into British ports for sale, all provisions bound for the coast of France. Her naval officers, seeking shelter or supplies in Ameri-

can harbors, were insolent, overbearing, and defiant; while the domestic coasting-trade seemed to exist only by permission of English officials, and commerce with Britain was made to depend upon an annual proclamation of the sovereign.

This condition of affairs was but too well calculated to inflame the public mind; and the fire was sedulously fanned by the Republican press, and the opponents of the national administration in Congress. Secretary Jefferson's personal relations with the French ambassador were particularly cordial; and it required some pressure from his fellow-members of the cabinet, to have the despatches to him colored with a suitable degree of vigor and force. The correspondence with Hammond, on the other hand, was quite formal, and, by the enumeration of grievances, contributed to keep disputes alive, rather than remove their cause, and thus unite the two nations in the bonds of friendship. Before Jefferson withdrew from office, in 1793, things had reached such a pass that he deemed further negotiation with England at an end. Jay thought that country had "acted unwisely and unjustly," and would "not be surprised if war should take place." The preservation of peace appeared almost hopeless. Washington viewed the situation with great apprehension, and resolved to send an ambassador of the highest character to England, to adjust, if possible, all subjects

of controversy, and, while determined to spare no honorable means to avert hostilities, recommended that steps should be taken to place the country in a satisfactory position of defence. In this wise purpose, he was thwarted by a party in Congress which seemed bent upon forcing the republic into a war, yet opposed every measure of preparation. The weapons on which they relied to obtain redress were commercial restrictions, sequestration of debts, and non-intercourse. Such were tried by later administrations, thereby alienating the people from their Government, and crippling trade; nor until the course proposed by the first President had been adopted, did other nations respect the rights of America.

Public sentiment was eminently hostile to England; and all the statesmanship, tact, and firmness of Washington were required to overcome the obstacles placed in his path, aided, as the workers were, by the unwise proceedings of her authorities, and the unhappy temper of the British Resident at Philadelphia. He realized that a continuance of peace was necessary to the growth and development of the country; and his greatness was never more strikingly displayed than while directing the affairs of state, amid the exceptional difficulties that surrounded him. Retaliatory measures, necessarily leading to hostilities, were introduced, and had passed one

branch of Congress, when he concluded to carry out his further purpose, and seek peace by negotiating in London. The question of whom to suggest for this delicate mission, was the subject of anxious consideration among the supporters of the administration in the two Houses. The availability of Madison, Adams, Jefferson, Hamilton, for the work, was canvassed, and the latter was the unanimous choice. He, however, could not be spared at this time. Fortunately, the chief justice arrived in Philadelphia at the moment, to open the Supreme Court; and Hamilton, after sounding him, wrote to the President that Jay was "the only man in whose qualification for success there would be a thorough confidence, and him alone it would be advisable to send. I think," said he, "the business will have the best chance possible in his hands." He was accordingly chosen. It was thought that the prominent position he occupied, the reputation he had acquired in former negotiations, combined with the confidence reposed in his ability and integrity by the Government of his own country, would give weight to the embassy, and impress England with the gravity of the situation.

The impropriety of intrusting the negotiation of a treaty to a person who might afterwards be called upon, judicially, to interpret it, does not seem to have occurred to the distinguished men whom Wash-

ington consulted on the occasion. Indeed, so little was thought of the procedure, that the same course was followed by Adams in the selection of Jay's successor on the bench, as an envoy to revolutionary France. Its impolicy is now apparent; but we must remember that the functions and relations of the co-ordinate departments of the Government were not, at the time, clearly defined. The Supreme Court had lately attracted but little attention, few cases being brought before it; and the number of its sessions had, in consequence, been reduced; nor do we even know the place of its meeting in Philadelphia. Its great importance as an independent branch of the national authority, and its reputation as the exponent of Constitutional law, was only fully established at a later period, by a Webster, Marshall, Story, and a Wirt.

Jay was in the meridian of life, with a healthy moral nature. His name was not associated with cabals; and while true to his convictions, and earnest in the suppport of his political friends, he had never descended into the arena of party politics. He occupied the highest place in the public estimation. Filling a station in weight and dignity second only to that of the President, with varied experience at home and abroad, and a character which calumny had not dared assail, he was ranked with the first statesmen of the country, and bade fair to become

the successor of Washington. His appointment did not, it is true, meet the approval of some, who feared that the *éclat* acquired by a successful negotiation might land him in the executive chair. John Adams, anticipating a rival for that office, said, "If he succeeds, it will recommend him to the choice of the people as President." The atmosphere was, however, loaded with detraction, slander, and obloquy, to be discharged upon his head, and that of the President who despatched him on his peaceful mission.

Any agreement which might be effected, however favorable, would receive condemnation from those who were clamoring for hostilities; and, as was happily said, "Jay's success will secure peace abroad, and kindle war at home." The sympathizers with France had resolved that no treaty should be made; and, before the envoy left America to negotiate one, the affiliated clubs, which had been established in imitation of the Jacobin of Paris, struck the key-note, and an unscrupulous press poured forth denunciations of England, reprobation of the mission, and avowed a purpose of defeating any settlement. Even before the conditions of the treaty were known, the governor of Virginia indicated his antagonism by proclaiming that "no aid, assistance, or comfort should be given British ships-of-war stationed in our harbors;" and by legislative enactment, that

State prevented a levy upon land for debt, thus almost debarring English creditors from collecting their claims from a people devoted to agricultural pursuits.

XIX.

THE TREATY WITH ENGLAND.

JAY'S fitness for the task imposed upon him cannot be better illustrated than by an extract from Secretary Randolph's letter of instructions. "You have been," he wrote, "personally conversant with the whole of the transactions connected with the treaty of peace. You were minister at its formation, secretary of foreign affairs when the sentiments of the Confederated Congress were announced through your office; and, as chief justice, you have been witness to what has passed in our courts, and know the real state of our laws with regard to British debts."

He carried with him the issues of peace and war, which weighty responsibility, fortunately, rested on a man of singular self-control, and soundness of judgment; one who was well qualified to handle matters of great national importance. He was required to demand the evacuation of the posts; compensation for spoliations already made, and its future abandonment; to claim payment for the negroes who had been carried off contrary to the provisions of the

treaty; endeavor to have the question of debts referred to the tribunals of the United States for adjustment; and, on no account, to conclude any treaty which did not open the coveted West-India trade, or which contravened the conditions of the alliance between France and America. All other subjects appear to have been left to the discretion of the negotiator. The instructions further read, that "you support the doctrine of government with arguments proper for the occasion, and with that attention to your former public opinions, which self-respect will justify, without releasing the pretensions which have hitherto been maintained." This last had reference to his report to Congress while secretary of foreign affairs. Having received his credentials, Jay, with his son as private secretary, sailed on his mission, leaving the remainder of his family under the care of his wife and nephew — a speedy return being anticipated.

William Lord Grenville, a younger son of the projector of the Stamp Act, was, at the time, the foreign secretary of Pitt, his cousin; and between the two the most confidential relations existed. He was a favorable specimen of the English statesman. Of good abilities and liberal education, thoroughly versed in ministerial duties, stately in bearing, of uncompromising principles and firmness of character, high-toned and honorable, and having matched his

powers with many of the eminent diplomats of Europe, he was no light antagonist for the American envoy to encounter. The latter, moreover, was weighed down by a divided public sentiment in his own country; while Grenville possessed a knowledge of Congressional reports, and had the entire sympathy of the people of England. Ere their business was accomplished, each had learned to entertain the highest respect for the other. Jay at once notified the secretary of his arrival in London, held an interview with him and Pitt, and was most graciously received by the king. His first impressions were favorable.

The negotiation was begun during the earlier part of 1794, but made no progress for some time. The tone of the public press in America, the intemperate utterances in Congress, with Genet's proceedings at Charleston, and enthusiastic reception by the citizens of Philadelphia, inclined the secretary to doubt the sincerity of the American Government in seeking peace. Recent successes against the French had inflated the cabinet, and adverse measures were in contemplation at the time of Jay's arrival; but his efforts, combined with the high esteem in which the President was held, overcame them: and in August, he was informed that the ministry were prepared to settle the controversy, upon what they deemed just and liberal terms. Aware that any stand taken in writing is not willingly given up, Jay suggested the

advantage of holding verbal conferences, neither side being committed to any thing until an agreement should have been reached; thus enabling them speedily to ascertain wherein they differed, and how far a compromise could be effected. This mode of procedure, wise in itself, is annoying to a later generation, who desire to penetrate the veil, and see the treaty in process of formation. Jay truly said that those alone who have levelled uneven ground, know how little of the work afterward appears. We should like to look back upon this levelling operation, to learn the attitude of each of the negotiators; what demands, abatements, and concessions were made; how far the American conformed to his instructions, and by what arguments he sustained the claims of his country. We know little more than that, after five months of alternate hope and discouragement, a treaty was signed, which caused as much clamor and vituperation at home as Bolingbroke's celebrated Treaty of Utrecht. In many respects it was not satisfactory to Jay himself; but he was confident the English limit of concession had been reached, that it was the very best to be procured: and, painfully conscious that the only choice was between an immediate adjustment and a war with England, he affixed his name to the document. He was familiar with public feeling in his own country, and must have foreseen that he was performing an act of self-immolation,

and placing at hazard every thing of a political nature; as no treaty would be acceptable to large numbers of his fellow-citizens, which did not yield to America every point in dispute.

That the one just negotiated was objectionable in many of its provisions, must be admitted; and further, that the United States thereby abandoned some of the important positions previously assumed. This was unavoidable. Pinckney wrote to the department from London, "As little has been conceded by Mr. Jay, and as much obtained by the United States, as, all the circumstances considered, could be expected." By the former treaty, Great Britain had stipulated that her troops should withdraw with all convenient speed; yet for twelve years she had continued to maintain forts within the acknowledged boundaries of the Union, whereby the public mind was irritated, Indian hostilities encouraged, and the valuable fur-trade of the North-West diverted to her Province of Canada. The immediate evacuation of these posts should, it was affirmed by the opposition, have been required, instead of allowing two years longer for the purpose. The United States, it was claimed, obtained by the new treaty no other guaranty for a withdrawal from them than that already possessed; and the lapse of time in complying with the stipulations made before, left room to suppose that some new plea might be found for retaining them after

the date now agreed upon. Nothing was said about impressment. When she began the practice, England had professed only to secure crews for her ships from her own mariners when in port, and to arrest deserters from her navy; but she had lately asserted the right to reclaim her seamen wherever found. It was almost impossible to distinguish in appearance those of the two nations; and though comparatively few Americans had as yet been impressed on her men-of-war, the number increased with the immunity enjoyed. The moderate extent that it had yet reached, should, it was thought, have rendered the matter more easy of adjustment. Great Britain pretended to seize only her own subjects; and surely some plan could have been devised to prevent their shipment on board American vessels, thus removing all excuse for overhauling them. Impressment was a grievous wrong inflicted upon American citizens, a direct insult to their nationality; and hostilities between the countries ultimately resulted from the feeling that it engendered.

Another fault found with the treaty, was the restriction that it placed upon the re-exportation of merchandise received from the West Indies. While the parent state was engaged in war, these Islands depended upon the United States for essential supplies; and it had been the practice for France to open her colonial ports during its continuance. By the rule

that she established in 1756, and endeavored to ingraft on the law of nations, England held that commerce in time of war could not be permitted with any colony where it had been prohibited during peace. She now, in pursuance of this policy, conceded the right of small American vessels to trade at all times with her islands. So far, this was advantageous; but when she undertook to interdict merchants selling abroad the produce thus imported and landed, she trespassed upon the right of a sovereign power to regulate its own commerce, imposed an onerous duty upon its revenue officers, and gave rise to a vexatious detention and search of its shipping upon the high seas.

No provision was made for compensation for the slaves that had been carried off at the time of the evacuation, nor for their return. Their loss had been a sore grievance to the planting States, which, deprived of their labor, were the more unable to discharge their indebtedness to British merchants. England was placed on the footing of the most favored nation, which, in effect, permitted her to capture French property when found on board American vessels; while France, on the other hand, was, by the treaty of alliance, debarred the same privilege.

Two questions naturally arise. Should Jay have assented to a treaty against which such serious

objections could be raised? and was it expedient for the United States to ratify it? When the condition of the country is taken into consideration, the strong probability that hostilities would have ensued in the event of the negotiation failing, and the firm belief that no better terms could have been secured, both these questions must, we think, be answered in the affirmative. War is rarely expedient, and at all times to be deprecated and avoided if consistent with national safety. Commercial and most other treaties are essentially compromises; and while America, in the one just concluded, relinquished a number of her claims, she gained many important advantages in return. Possession is proverbially nine points of the law; and what England surrendered, was virtually her own. She already held with a firm grasp the military posts at the West, as well as the merchandise she had captured. Her West-India commerce was prohibited to other nations. She exercised, unobstructed, the right of search and impressment, and the American flag waved on the ocean by her sufferance alone. America was not in a position to enforce any concession, and had no equivalent to offer for the abandonment of these pretensions. She had recently emerged from war, exhausted, and burdened with a heavy debt. The Constitution lately established had not yet acquired consistency and strength; while two parties, bitterly

hostile, divided public opinion, — the one advocating fraternity with France; the other, more intimate relations with England. The administration had proposed to render the country independent of foreign powers, but was thwarted in the prudent endeavor to place it in a state of defence before negotiating. Under the circumstances, a war could not prove other than disastrous, even if the national existence were preserved. She would have been compelled to throw herself into the arms of France, which torn by faction, and dripping with the blood of her people, seemed at the time likely to succumb, leaving England at liberty to wreak vengeance upon the late colonies.

No treaty negotiated by America has been more heartily condemned, and none in its operation has proved more beneficial. Judged to-day by its results, it would meet the approval of all. Jefferson, Madison, and Monroe strenuously objected to its ratification; yet each, when in the Executive chair, failed to obtain more favorable conditions. Their vain attempt is its strongest vindication. It prevented an inopportune war, in which by no possibility could greater advantages have been procured; and obviated the necessity of a close alliance with France, and her consequent baleful military influence. It fixed neutrality as the settled policy in a contest that was to involve every nation of Europe, and allowed time to

cement the Union, and enable the new machinery of government to work smoothly. It restored more than two millions of dollars to American merchants which would have been sacrificed in the event of hostilities; and, by paying this sum, Great Britain acknowledged the injustice of her recent proceedings, and waived the attempt to inject the rule of 1756 into international law. The eight posts that she held were quietly given up at the appointed time.

Morris, during his interview with the foreign secretary, after vainly protesting against the practice of impressment, had wittily said, "I believe, my lord, that it is the only instance in which we are not treated as aliens;" and Pinckney, the Resident at London, had been unsuccessfully urging an adjustment of the question before Jay's arrival. Although the treaty was silent on the subject, no Republican administration was more successful in obtaining its abandonment. The war of 1812, undertaken in that interest, failed to change the British practice. Mr. Webster's emphatic letter to Lord Ashburton, alone removed this disturbing element between the countries. In all negotiations down to a recent period, America was unable to secure better terms with regard to West-India shipments. Her efforts in that direction were fruitless. The progress of nations towards freedom in trade and more enlightened

colonial legislation has since spread wide the door which Jay succeeded in only partially opening.

It is quite significant that nothing was said about compensation for the deported slaves. Their dual condition as persons and property must always render this a difficult point to determine; and it so happened, that a dispute of a similar nature arose under the Treaty of Ghent, which, after years of profitless discussion, was at last settled by compromise. Jay, as secretary, had directed Adams, when in London, to complain of their removal, and, in his report to the Continental Congress, declared that Britain, by the treaty of 1783, had bound herself to do a great wrong, and could only extricate herself from the dilemma by paying for them. This last, it was evident, Grenville did not intend doing; and their restoration was impossible. He contended that no alteration in the status of any property was designed by the Treaty of Paris; that every slave, like every horse, straying into the lines, established British ownership, as was the case with the negroes at the time of that Convention; and further, that those who had been invited thither, and had had freedom conferred upon them, could not be returned, as they had been manumitted by competent authority. The argument seemed plausible; but Jay, who had assisted in framing the first treaty, knew that Grenville's construction did not conform to the under-

standing had at the time. He said in his secret report, "Such negroes as fled from their masters, and were received and protected, are clearly comprehended in the article, for the title of their masters was not destroyed by their elopement," and that the first violation of the treaty was on the part of Great Britain, by her troops carrying them away when they evacuated New York. Many of the negroes in question had been shipped by officers to colonial possessions, and there sold; some had from time to time taken advantage of the disturbed condition of the country to effect their escape; while others, claiming to be free, and employed as servants, followed the soldiers on their embarkation. Virginia had probably suffered more in this way than any of her sisters. The predatory incursions into her territory by Arnold and others, carried off great numbers. It so happened that her people were more largely indebted abroad than those of any other State; and, as there seemed no way to secure payment for her slaves, a compromise was made in the treaty by the National Government waiving all claim for compensation, and assuming the debts due by her citizens to English merchants, when passed upon by a mixed commission. An adjustment of the matter in this way, while unsatisfactory to individuals, was yet, perhaps, an equitable settlement of a complicated dispute between the countries. The United States was the

greatest loser, as it paid six hundred thousand dollars under the ruling of the commission.

The treaty further provided for reciprocal liberty of commerce between America and Britain, and opened to the former the valuable trade with the East Indies. This last concession was a great innovation on England's navigation laws, and one she refused to make in subsequent negotiations. For the first time in the history of the United States, provision was made for the extradition of criminals; and it was also stipulated that no sequestration of debts should be permitted to either nation in the event of a war between them.

XX.

THE TREATY IN THE UNITED STATES.

JAY wrote home frequently during the negotiation, but heard from the Government only at rare intervals. We may well imagine Washington's great desire for a peaceable adjustment, and impatience in awaiting the receipt of a treaty upon which the destiny of the country, the future course of his administration, and his personal comfort and happiness, seemed so largely to depend. Though executed in the autumn, it failed to reach America before the following spring, after the session of Congress had closed. As soon as it was received, he called the Senate together, and the document, with the accompanying papers, was laid before it. After a discussion of some days, its ratification — except one article — was advised by a two-third vote. That body had already established a rule that all executive business should be conducted with closed doors, and had placed an injunction of secrecy upon its members. This was of special importance in the present instance, as the treaty had not yet been submitted to

the cabinet, the President having simply consulted the Senate before determining upon his own action. In violation of the salutary regulation, and blind to the impropriety of the proceeding, a senator from Virginia furnished a copy to an editor of Philadelphia, in whose journal it appeared the following morning.

Opposition to the provisions at once swept the country with the violence of a tropical hurricane. The abuse of the negotiator spread even faster than the publication of the terms. The waves of party-feeling rose still higher than before, and threatened by their fury to drive the ship of state from its moorings. Popular indignation was sedulously aroused. Meetings held in the more important places denounced the treaty, and protested against its ratification. Jefferson pronounced it "execrable," "an infamous Act," and "stamped with avarice and corruption." A copy of it was burned before the residence of the British minister at Philadelphia; and Jay, branded as a traitor, was dragged in effigy through the streets, and condemned to a like indignity; while Charleston declared him worthy of the recently invented guillotine.

Public reason was unseated. That a man who had resisted the encroachments of Britain at the hazard of every thing dear in life, who had withstood the inordinate pretensions of Spain, who at Paris had demanded for his country the broadest

recognition and the most extended boundaries, whose career was marked by probity and steady devotion to her interests, should be thus calumniated, can alone be attributed to the rancor of party and the arts of the demagogue. The treaty supplied the opposition with a needed war-cry. They had not heretofore dared attack the President, choosing rather to weaken his administration by denouncing its proceedings, and professing to believe that he was hoodwinked into supporting them. The financial schemes of Hamilton had furnished them with formidable weapons, but the triumphant success of all his measures turned their arms against themselves. He smote the rock of national resources, and abundant streams of revenue burst forth. The charge against him of malfeasance in office had been rung through all its changes, but investigation raised him higher than before in public confidence. The virulence and indecency of the journals of that day would not be tolerated in this. All the vulgar abuse of party was poured into them. No character was sufficiently elevated, and no reputation sacred enough, to escape assault when it suited the purpose of their managers; and the malignancy of the French Convention was reflected in the sheets of Cobbett and Freneau, Fenno and Bache. Every means had been employed to secure the rejection of the treaty; and, before its conditions were divulged, Bache termed it

"an imp of darkness, illegitimately begotten," and said, "If the Senate expect to cram it down the throats of the people, they mistake their objects." Its friends resorted from vituperation to argument; and the controversy was removed from the hustings to the press, where it raged with intense and embittered feeling in volumes and pamphlets, essays and squibs. Among the most remarkable were the essays of "Decius" in opposition to it, and those of "Camillus" in its support. The knights who thus fought with their visors down, are known to have been the brother-in-law of Jay, and the late secretary of the Treasury. Jefferson, who, with deep interest, watched the engagement from afar, soon discovered that the first named was unable to cope with his redoubted adversary, and pressed Madison to enter the lists before he should be unhorsed; but the latter was too wary to meet the Federal champion, and left Livingston to his fate. The essays of Hamilton still survive in American literature, though the occasion which called them forth is well-nigh forgotten.

While Jefferson was urging his friends to the encounter, Jay remained undisturbed. He seemed an unconcerned spectator, rather than a target for denunciation. The embittered hostility, of which he was the object, left not the slightest trace upon his mind; his conduct being that of one who had con-

scientiously performed a duty to his country, and then committed the result to the mature conviction of his fellow-citizens. He entered into no defence of the treaty, merely saying, "God governs the world; and we have only to do our duty wisely, and leave the issue to him." Washington, too, preserved his equanimity. He consulted on this, as upon other occasions, the best interest of the nation intrusted to his keeping; and after obtaining the opinions of those possessing his confidence, and weighing their reasons in the impartial scale of his own judgment, he affixed his signature, thereby constituting the treaty a supreme law of the land. Only once did he hesitate. News came that Britain had renewed the instructions to seize provisions bound for the coast of France. The information, however, proved false. In suppressing the whiskey insurrection the year before, and now in signing the treaty in the face of a violent opposition, he demonstrated to the world the efficacy and power of the government that had been recently established.

Being thus ratified by the contracting parties, and proclaimed by the President, it was to be supposed that all clamor against the treaty would cease; but it was destined to meet with a fiercer and more deadly hostility than it had yet experienced. As an appropriation by Congress was essential to carry its provisions into effect, it necessarily came before that

body; the House, where the Republicans were in a majority, taking the initiative. Edward Livingston — of whom we had a glimpse in childhood — was now a member from the city of New York, and, like most of the name, opposed to the administration. The debate arose upon his motion, requesting from the Executive, copies of all papers connected with the recent settlement. He supported it by an elaborate speech, claiming that the House was vested with the discretionary power of carrying the treaty into effect, or of refusing its sanction. The production of the papers was resisted, for the reason, that, under the Constitution, that branch of the Government took no part in the formation of treaties, the duty devolving upon the President and Senate. It was further objected, that the documents called for were not essential in making the necessary appropriations; and that, if they were intended to be used for the purpose of impeachment, it should have been so stated in the resolution. This preliminary question called forth speeches of eloquence and ability by Madison, Ames, Gallatin, and others. Livingston's motion was finally passed by a large majority: but Washington declined to comply with it, upon the ground that it would establish a dangerous precedent; that foreign negotiations always required caution, and sometimes depended on secrecy for their success; and that the treaty-making power was, under the Constitution,

confined to the President and Senate. This reply, assuming advanced Federal ground, seemed to sever all political relations between him and the leaders of the opposition. He had heretofore been treated by them with respect: henceforth no distinction was made between him and his advisers, and no public man was more vilely abused during the remainder of his administration.

Upon receiving this response, the House reaffirmed their right to have the papers laid before them, and then took up the subject of making the necessary appropriation, which brought on a lengthy discussion. This was the first engagement between the hostile parties, untrammelled by consideration for the President; and Judge Marshall says, "Never had a greater display been made of argument, of eloquence, or of passion." The bare mention of the names of some of the men who participated in it, will satisfy the reader that this legislative tournament must have been brilliant in the extreme. After some preliminary skirmishing, Madison — a Federalist by nature, a Republican from association — opened the debate. He said that it was for the members to decide whether the general power of making treaties superseded the action of the House. The objections to the present one, he declared, were an absence of reciprocity, the debts due to British merchants being paid, while no pro-

vision was made for compensating the owners of slaves that had been carried away; the surrender of the right to levy discriminating duties; the principle that free ships make free goods; and he affirmed besides, that it gave up the most effective weapon which a debtor nation, like the United States, could wield, when it stipulated that sequestration should not be resorted to in the event of a war between the countries.[1] Giles, distinguished at all times as an uncompromising partisan, together with his colleague Nichols, and Gallatin, spoke on the same side. The latter frankly admitted that no new treaty could be negotiated were the present one lost, but thought the danger of war ensuing therefrom chimerical, and that, like other evils, it was conjured up to induce them to pass the bill. He did not arrogate for the House the power of concluding treaties, but claimed for it a supervision over the action of those who negotiated them. He said that compensation had been allowed for every demand against the country, and all doubtful ones, on her part, abandoned; and that America consented to receive the Western posts under conditions never before contemplated. He approved of the arrange-

[1] Madison was embarrassed throughout the discussion, by the knowledge that the convention at Philadelphia, of which he was a member, had expressly declined to confer upon the House any supervision over treaties; and the absence of this power had been urged, in his presence, in the one held at Richmond, as an objection to the ratification of the Constitution.

ments made to pay for spoliations, thought justice should be done to British creditors, and essayed to demonstrate, by Vattel, that slaves, being by national law assimilated to real estate, cannot be made the subject of booty. Jefferson was so delighted with this speech, that he declared it worthy of a place among the papers of "The Federalist."

The friends of the treaty in reply averred, that the first infraction of the former one had been made by States obstructing the collection of debts; that Britain regarded the negroes as men, and not property, and that she would admit no liability for their payment. They argued that the principle, that free ships make free goods, had never been adopted by other nations as international law; and even if, as was alleged, the list of contraband had been enlarged by the treaty, England had, on the other hand, stipulated to pay for the past spoliations, and refrain in future from a system so detrimental to American interests. She had, moreover, agreed to open her East and West India trade, which had heretofore been closed to all nations. While vessels of over seventy tons were prohibited from engaging in the latter, there was no restriction imposed on the former. No other nation participated in the trade; and the privilege was denied her own subjects, unless belonging to the East-India Company. Goodhue, who resided in Salem, affirmed the trade was already great and profitable.

That town alone had thirty vessels engaged in it, and there were perhaps three times as many in all the United States. As for the abandonment of sequestration, on which Madison laid such stress, its enforcement would be unjust to individuals, and its exercise impolitic by a country like America, so greatly needing the use of those essentials, — capital and credit. Speaking of the effect likely to be produced abroad by its rejection, they maintained that if this treaty, made and ratified according to the provisions of the Constitution, should be violated, the United States would be regarded by the world as a faithless nation, which no contract could bind.

The most effective speech was one delivered near the close of the discussion by Fisher Ames, whom his admirers fondly termed "the American Burke." Afflicted with consumption, and unable to attend during the early part of the session, his physician had forbidden his engaging in the debate. His room-mate, Judge Smith, says that he had no intention of addressing the House, and spoke without premeditation, apparently impelled by feelings that he could not resist. When he arose, he was so feeble as to be hardly able to stand, and leaned upon the desk while delivering his address. It was distinguished alike for its earnest pathos, comprehensive knowledge of human nature, and of the motives of political action. He spoke of the inconsistency of

negotiating a treaty, and then defeating its operation by neglecting to carry its provisions into effect. This could only be regarded, he said, as a breach of national faith. He alluded to the large sums to be paid under it to American merchants, the immense gains to be secured by neutrality, and therefore deprecated a policy which would exchange these for a war that threatened not only the peace of the country, but even the national existence. He depicted the horrors of an Indian outbreak, should the bill fail, and thought that the responsibility for this would rest upon the House. In conclusion, he said, "No member but will think his chance to be a witness of the consequence greater than mine; yet, if the vote of rejection should pass, even I, slender and almost broken as my hold on life is, may outlive the Government and Constitution of my country." Vice-President Adams, who sat beside Judge Iredell of the Supreme Bench during this speech, wrote, "The judge exclaimed, 'I never heard any thing so great since I was born!'—'It is divine,' I said. No dry eye in the House except among the ——." Venable of Virginia moved an adjournment, "lest the House should vote under the influence of a sensibility which their calmer judgment might condemn." Considering the nature of the assembly, and the intensity of party predilection, no stronger testimony to the eloquence of the speaker could

have been given. His emaciated form, and the pallor of death on his face, enlisted the deepest sympathy; and tradition for many years claimed "Ames's speech on the British treaty" as the most powerful ever delivered in Congress.

The policy of the friends of the treaty had been to lengthen the discussion, in order to give the mercantile and conservative voice of the country an opportunity of being heard. The violence with which it had been assailed, was in time followed by a re-action. Thoughtful men came to realize the danger to be apprehended if it were not carried into effect; and many who were opposed to its provisions, now that it had been ratified according to the terms of the Constitution, were desirous that it should become operative. Expression was given to these sentiments by petitions which doubtless had their weight with those members who were looking forward to an election to the succeeding Congress. Reviewing the debate at the present time, one is impressed by the close adherence of all to the question before them. The discussion lasted for eight weeks, almost to the exclusion of any other business; and out of the large number of speeches, there appears absolutely no departure from it. The resolution offered by Livingston, calling for the production of the papers, had passed the House by a vote of 62 to 37: the bill making the appropriation

essential to render the treaty effective by one of 51 to 48. All the New-England members, except four, voted for it, together with a majority of those from the Middle States, and four from the South. Virginia being the most aggrieved, her representatives unanimously opposed it. Her numerous rivers emptying into the Chesapeake, brought her large planters — the leaders of her people — into direct connection, as importers, with the merchants of England; and there can be little doubt that the subject of British debts exercised great influence on the occasion, nor that it furnishes a clew to many obscure points in American legislation, dating from the Peace of Paris. Indeed, it would hardly be too much to say, that the geographical division of parties in the country prior to 1800, may, to some extent, be traced back to it as well as to the slavery question.

The present decision neither affirmed nor denied to the House a supervision over treaties when its action is needed to render them operative. The matter rests to-day precisely where it did ninety years ago. When the Louisiana purchase treaty came before the Eighth Congress, in 1803, the situation of the political parties was reversed, the Republicans resting their support of it mainly on the advantages likely to be derived from the acquisition. As their opponents did not dare assume different ground from that occupied by them ten years before,

they based their objection to the payment upon the defective title of France, and the uncertain extent of the domain conveyed. A case more striking, as involving no party fealty, arose in the Alaska purchase. The treaty negotiated by Mr. Seward, stipulated that the inhospitable territory should be transferred by Russia before the consideration had been paid. The United States, under this provision, was placed in possession of the country, and the President's proclamation issued declaring the treaty a supreme law of the land. The bill appropriating the amount came before the House in December, 1867, and was discussed from time to time for six months. A preamble was at last attached, saying that "The stipulations of said treaty are among the subjects, which, by the Constitution of the United States, are submitted to the power of Congress, and over which Congress has jurisdiction; and it being for such reasons necessary that the consent of Congress should be given to said stipulations before the same can have full force and effect, and having taken into consideration the said treaty, and approving the stipulations therein to the end that the same may be carried into effect," etc. When this reached the Senate in due course, they refused to concur in any measure which implied that the approval of the Representatives was indispensable, and, a committee of conference being appointed, agreed to the follow-

ing substitute: "Whereas said stipulations cannot be carried into full force and effect, except by legislation to which the consent of both Houses of Congress is necessary," etc. This being reported to the House by their committee, extreme opposition was at once manifested to the phraseology; and its passage was secured, only by the application of the previous question, with the assurance that the Senate was unyielding. The majority in its favor was but forty-three, one-third of all the members being absent, or not voting.

Forty years after the time of Jay's treaty, the same Edward Livingston, who had first raised the point, found himself under the necessity of assuming, with President Jackson, the extreme position which the Federalists had then held, and exacting from France the fulfilment of the one negotiated by Mr. Rives with the king, Louis Philippe, but for which her Chamber of Deputies had failed to make the needful appropriation. A treaty is a law made by the President and Senate; and to a demand for its observance, it would seem to be no answer to say that the legislative branch of the Government is dissatisfied with its terms. The United States in its international relations is a single political being, which, through its official organs, expresses its will, and assists in forming a treaty. The Constitution of the United States declares that those made in

pursuance of it shall be the supreme law of the land; and surely, if *supreme*, they must be paramount, and no recognized body in the country — not even Congress — is exempt from their operation, however much opposed to the provisions. The soundness of this construction would have been manifest had Congress refused the sum agreed to be paid in the case of the Alaska purchase. The treaty had been negotiated with the requisite formalities, approved by the Senate, proclaimed by the President, and the Government placed in possession of the territory. By the law of nations, a refusal under the circumstances to pay might properly have been deemed by Russia a *casus belli.*

XXI.

GOVERNOR OF NEW YORK.

WHEN Clinton's term as governor drew to a close, Jay was still abroad. He was recognized by the Federalists of the State as the proper successor; and the manner in which he had been deprived of the honor three years before, created a general desire among them that he should become a candidate. He had retained the position of chief justice; and having never expressed his wishes, nor been consulted about the matter, the party managers were free to nominate the most available person. It was generally supposed that he would be successful in the negotiation, but that at the same time he would be compelled to recede from some of the claims put forward on the part of his country; and it was feared that the opposition would seize upon any concessions to excite a clamor throughout the State, render him unpopular, and possibly defeat his election. The national parties in New York were, at the time, nearly balanced; and, should the treaty arrive during the canvass, its influence thrown into the scale might

prove decisive. Though all conceded Jay's ability and fitness for the office of governor, there were yet grave doubts entertained as to the expediency of placing him on the ticket; but, while the politicians hesitated, his spontaneous nomination in different counties forced the legislative caucus to ratify the selection of a candidate thus presented by the people. The large and influential Livingston family was now thoroughly allied with the Republicans; and it was anticipated that the struggle for the mastery of the State would be earnest, and provocative of a great deal of feeling. That party would certainly strive by every means to retain their hold upon it; while their opponents would be equally determined to drive them from power, and ultimately secure its electoral vote for a successor to Washington. Clinton, warned by experience, was too wary to meet the issue in his own person; and Robert Yates was chosen by his political friends as Jay's competitor. He was a favorite with the people, had been a delegate to the Philadelphia Convention, but withdrew before its labors were concluded, and was now at the head of the judiciary of the State. Washington had written to Jay in London, that, at the conclusion of the treaty, he wished him to become minister resident in the place of Pinckney. He had declined the position; but his detention in England gave color to the objection raised by his opponents, that he

intended remaining abroad in order to exchange the ratifications. Stephen Van Rensselaer, the Patroon, and son-in-law of Schuyler, was nominated lieutenant-governor on the Federal ticket. The election took place in the spring of 1795, when Jay received a large majority of the popular vote; and, in conformity with law, the legislative canvassers declared him governor two days before his arrival at the metropolis. Its citizens had just passed through an excited canvass; his supporters were flushed with victory; and, on landing, their distinguished townsman was received with the greatest enthusiasm. Bells were rung, cannon fired, and a large crowd escorted the newly chosen officer to his home. There can hardly be a doubt that he would have been defeated by a majority quite as large as that by which he was elected, had the stipulations of the treaty been known; but the long delay in its arrival probably saved him this mortification. Jay's allegiance to the Federal party had been given on principle. He was on terms of close friendship with its leaders, and upheld the administration of Washington, not less from affection and admiration for the man, than from approval of his national policy. Until the conditions of the treaty were divulged, a successful career as governor seemed to place the most elevated position of the country within his reach; but the feeling that it aroused was too deep

and embittered to immediately subside. The heir-apparent of Federal leadership was buried under a mountain of prejudice, and the elder Adams succeeded to the inheritance.

In the summer of 1795, Jay laid aside his judicial robes to assume the executive duties of the State. Soon after his induction into office, the fearful pestilence which had lately scourged Philadelphia, made its appearance in the city of New York; and during its prevalence, he remained there, laboring energetically to prevent its spreading, by having the infected removed, the streets cleaned, and sanitary regulations strictly enforced. His active measures fortunately stayed its progress. Upon its abatement, his deep and earnest nature was displayed by a proclamation, setting apart a day for fasting, prayer, and thanksgiving. This had been frequently done by the Continental Congress, and later by Democratic governors, but the proceeding was at that time a novelty in New York; and, though Jay disclaimed any official authority to take the step, his action was violently assailed by the Republican journals as an undue assumption of power.

The Legislature assembled in the city in the beginning of the following year. The new governor in addressing it said, "To exercise the powers vested in me with energy, impartiality, and freedom, are obligations of which I acknowledge the full force."

He expressed his determination to regard all of his fellow-citizens alike, to cherish and advance merit wherever found, to consider the National and State Governments as established by the will of the people, and pledged himself to respect and support their constituted authorities. Three points urged upon public attention from time to time, mark him as among the leading benefactors of his native State, — the penitentiary system forming a new era in criminal jurisprudence, the policy of internal improvements, and the gradual abolition of slavery. But a higher test yet remained to distinguish between the politician and the statesman, between the head of a party and a conscientious ruler. Clinton had presided over the State since the framing of the Constitution, and the subordinate positions under him were occupied mainly by Republican partisans. The New-York maxim, "To the victors belong the spoils," had not as yet been enunciated; but the Federalists, having overthrown their adversaries, not unnaturally expected to gather some of the fruits of their victory. Jay's announcement of his intention to make no removals for political considerations, therefore disappointed and chagrined large numbers. He had not been present during the recent canvass, had made no promises, and now adhered firmly to the determination he had before avowed. During his six years' term of office, not one incumbent was dismissed

except for proper reasons. So long as they discharged their duties with fidelity, they were sure of retaining their positions. It is related, that when a member of the council was recommending an applicant, because of his zeal and usefulness to the Federal cause, the governor interrupted him, saying, "That, sir, is not the question. Is he fit for the office?" It must not, however, be inferred that Jay was not an earnest party man. His convictions were too strong for him to be otherwise. He believed the one to which he belonged identified with the best interests and stability of the country; and, while it is certain that he made no removals for political expediency, it is equally certain that he took care that all vacancies occurring should be filled by competent Federal adherents. He enjoyed, with Hamilton, the confidence of the first President, who, it was understood, consulted them about the appointments in New York; and they thenceforth shared between them the moderate national patronage within the State. Jay had the satisfaction of tendering to this tried friend a position in the United-States Senate, which Hamilton was, however, under the necessity of declining. Toward the close of his first term as governor, the political campaign was opened with great vigor. The rectitude and ability displayed by Jay had won the respect of the citizens, and he was again nominated

by his party friends as their candidate; "being regarded," said an address soliciting his compliance with their wishes, "as one whose attachment to their liberties has been uniform, whose firmness in prosecuting them inflexible, and whose integrity in every part of his official conduct is unimpeachable." His competitor on this occasion was Chancellor Livingston. The selection of the latter by the Republicans was both painful and embarrassing to Jay. Their friendship in early life, and intimate social and political relations, down to a recent period, rendered him very reluctant to engage in such a rivalry. The chancellor was rich, ambitious, influential, with fascinating manners, and is said to have been one of the most eloquent men of the time. He had been foreign secretary, was an efficient agent in promoting the adoption of the Constitution by the State of New York; yet Washington, in filling the important offices at home and abroad under the new government, had entirely overlooked his merits. The appointment of Jay as chief justice instead of himself, had, it was thought, alienated him from the Federal party; and he was thenceforth, with the greater number of the name, identified with its rival. During the former canvass, partisans had, for their own purposes, endeavored to separate still further these ancient associates by covert insinuations in the daily press, which Jay had felt called

upon to notice. It was with a feeling of reluctance that Jay entered upon the contest. He had been looking forward to a withdrawal at the end of the term; but as the attitude of France toward the United States threatened hostilities, and demanded military preparation, a sense of duty to the State and National Government forbade the indulgence of his inclination. The outburst of popular indignation, which had been roused by the London treaty, had to a great extent subsided as men realized its beneficent workings; but political invective was abundantly supplied his adversaries by the measures of Mr. Adams, who had lately become President. Such, however, was the public confidence in the purity of Jay's administration, that he was re-elected governor by 2,382 majority.

Few events worthy of record had transpired during his first term as governor. The one on which he was now entering was noted for the organization of the common-school system, the removal of domestic servitude from the State, the quasi war with France, and the disruption and consequent overthrow of the Federal party in the nation. The first two measures were largely due to his personal influence. He had always favored the diffusion of education, believing that the continuance of American institutions depended upon the virtue and intelligence of the people. As a private citizen, he had incurred

the expense of instructing many of the poor children in the neighborhood of his own home, and was extremely gratified when, near the close of his administration, the Legislature recognized its duty, and authorized the sum of a hundred thousand dollars to be raised — one-eighth of which was to be lodged with the University for distribution among the academies of the Commonwealth, and the remainder applied to the encouragement of the public schools.

The First Congress, inspired by a detestation of arbitrary power, resolved that the people of the several colonies should lend no further aid to the prosecution of the slave-trade; and Jefferson, in the original draft of the Declaration, denounced it as one of the wrongs inflicted by the king upon them. Jay's views extended even farther than prohibiting the continuance of such a traffic, and had long been a steady advocate for the abolition of slavery within the State. While striving to release his country from foreign rule, he deemed it inconsistent to hold his fellow-beings in bondage; and it was probably owing to his enforced absence, that no provision to this end was made in the State Constitution. He had, when first abroad, emancipated his own slaves; and, since his return home, it was his habit to purchase his servants, and, by setting aside their wages, enable them, in time, to secure their freedom. While secretary of foreign affairs, the question of

consecrating the North-West territory to free labor was before Congress; and, with his firm conviction of the policy of such a measure, we may be sure that his powerful influence was exercised in favor of the ordinance prepared by Dane for that purpose. Yates alone, from his own State, voted against it. Jay had, a little earlier, been chosen president of a society to promote manumission, but when appointed chief justice, fearing that some subject might be brought before him for adjudication in which it was interested, had severed his connection with that organization. As soon, however, as he was elected governor, he used his utmost exertion to carry out a purpose that he had so much at heart, but only after repeated failures in the Legislature was this accomplished. He now, in January, 1799, had the great satisfaction of giving his official sanction to an Act which removed forever this incubus on the progress and prosperity of New York.

Monroe, who replaced Morris in France, had compromised his government by affiliation with the French rulers, and was, in consequence, recalled. From the time of his leaving that country, its authorities treated the United States in a manner befitting a dependent province rather than a friendly nation. Actuated by a sincere wish to preserve peace, President Adams despatched three commissioners to Paris, who, upon their return, reported that a treaty could

only be negotiated by America's advancing large sums to the French treasury, besides giving *douceurs* to the directors and their satellites. The knowledge of the failure of the mission was soon followed by the news that a decree had been prepared by France, authorizing the capture of all vessels having on board goods of British origin, and that privateers were commissioned to prey upon American commerce. While the nation, generally, was aroused to the highest pitch of indignation by these hostile measures, the opposition in Congress were inclined to excuse them the more readily, as they mainly represented an agricultural constituency with little shipping, and were, therefore, unlikely to suffer any loss from them. "The reign of terror" had startled and shocked the other side, which dreaded the example upon their own people. Its leaders "lost their heads" as completely as the victims at the Place de la Revolution; and, though a new act in the drama had begun at Paris, they were still apprehensive. In opposition to Hamilton's judgment, a measure was introduced in Congress, designed to protect the country against the numerous French residing in it, who, although not naturalized, were yet meddling offensively in national concerns. In its progress through the Houses, its scope was so enlarged as to embrace *all* aliens, giving the President control over their persons, and authorizing him, in certain contin-

gencies, to transport them home, as is now done with improper classes of emigrants. Large numbers of Irish implicated in the outbreak were, at the time, fleeing to America; and the loyal adherence of their countrymen to the Democratic party dates from that time. Not satisfied with this, the members proceeded still farther, and, forgetting Bacon's warning against attacking the press, passed another Act, which made it criminal to speak or write any thing false or scandalous, with intent to bring odium upon the Executive or either branch of Congress. They somewhat mitigated its harshness by permitting the truth of the libel to be introduced in evidence, and making the jury judges of both the law and fact. This last measure was supposed to be aimed particularly at certain notorious characters.

The military spirit of the people was aroused by the proceedings of their former ally. Warlike preparations were made, and Washington appointed general-in-chief of the proposed army, with Hamilton as second in command. In view of the critical condition of affairs, Governor Jay, in the summer of 1798, called an extra session of the Legislature, when the House, at his suggestion, unanimously pledged the support of the State in maintaining the rights and honor of the nation. The city had heretofore been without defensive works; but it was now determined to erect fortifications, and otherwise prepare for a

conflict which seemed inevitable. Nearly a million and a quarter of dollars were appropriated for military purposes, to be expended under the supervision of the governor, and deducted from the sum which, under Hamilton's adjustment, had been proven due the General Government from the State. All this precaution was happily unnecessary. President Adams, who had declared that he would send no further mission to France until he had received assurances of a reception becoming the dignity of the country, upon a slight opening, changed his policy, to the unalloyed satisfaction of the Republicans; and this altered attitude, combined with other causes to be named, led to the division and consequent downfall of the Federal party.

It is now time that we should revert to the political movements bearing upon the coming Presidential election.

XXII.

ELECTION OF JEFFERSON.

THE year which followed Jay's second inauguration as governor was one of unsurpassed political excitement in the United States. Adams, whom Dr. Franklin aptly described as "always an honest man, often a wise one, but sometimes and in some things absolutely out of his senses," was approaching the end of his term as President, and public attention was absorbed in the task of choosing a successor. He had unfortunately received from the previous administration all of his cabinet officers, while Hamilton still retained their allegiance, and was recognized by them as the head of the Federal party. The President looked upon this leadership as a continued menace, and aspired to occupy the position himself; but vain, irritable, without tact, and incapable of acting upon any fixed system, he had but a slight hold upon the affection of those whom he desired to represent. Fortuitous circumstances had formerly secured his selection as Vice-President, in which capacity there was nothing to call for an exhibit of his infirmities;

but, when occupying the higher office, they soon became manifest. Had he been endowed with political sagacity, he would have drawn Hamilton to his side, and have given heed to his counsels. As this latter statesman possessed in a marked degree the confidence of the most distinguished men of the party, they would have been induced to support the administration, thus preventing the breach which ensued. Jefferson essayed to estrange the two still more, but Madison failed to deliver his letter to Adams. We have no means of knowing what was accomplished in that direction at a personal interview, but the urgent interference of Washington was subsequently found necessary to secure Hamilton's appointment as his second in military rank.

At the time of Adams's election, a sectional feeling, destined in the future to work so much evil, had already been developed; and he in consequence received from States south of the Potomac, but two electoral votes. New York had given him her twelve, yet the entire majority over his competitor was but three in all the colleges. The national parties were not unequally matched in the State; and it was evident, that, could its vote be diverted to Jefferson in the next contest, his victory would be assured. Hence, strenuous efforts were made to accomplish this end, and for months society was like a seething caldron. The trouble with France had, for the

moment, swelled the numbers of the Federalists, and closed up their ranks; but the capricious course of the President, and the violent disruption of the cabinet, rent them asunder, never to be re-united. Gov. Jay had won the respect of his constituents; and, even though he withdrew from the position, his friends would doubtless have retained authority in the State, in spite of any efforts made for their displacement, but for the unwise and intemperate proceedings of the national Executive. Indeed, during the French excitement, it seemed almost certain, that, after the local election, they would have a majority in the new Legislature, and thus retain for their candidate the electoral vote of New York. This pleasing prospect was soon obscured. When its people found Mr. Adams sternly enforcing the Sedition Law, and exercising the power it conferred in an unfeeling manner upon one of their most esteemed citizens, they turned with disgust from a party which they held responsible for its enactment, as well as for this violent procedure.

The permanent ascendency which the Republicans seemed to have acquired in the metropolis, had been wrested from them, in the spring of 1799, by the unpopularity of a scheme of Burr's, already conspicuous in the State as an unscrupulous political tactician. He had been a member of the assembly the preceding year, and, under the pretence of sup-

plying pure and wholesome water, obtained a charter which enabled the corporators to engage in banking. In consequence of the feeling this aroused, he did not dare present himself again as a candidate, but, with great tact and unwearied efforts, succeeded in healing divisions in his party, and nominating a delegation for the assembly, which embraced the Republicans most eminent for wealth, station, or family influence. Gov. Clinton headed the list; and among his associates were Gen. Gates, Brockholst Livingston, and other well-known citizens. The ticket challenged public confidence; and its success was further promoted by the newly established bank, which accommodated the Republican merchants with discounts they would otherwise have been unable to obtain. The result followed which Burr had anticipated. The Federal majority of the last year was overcome, and New-York City secured by the Republicans, giving them control of the State. Adams subsequently received but four electoral votes south of Maryland, and Jefferson became his successor. Burr, to whose untiring exertions this great victory was due, was thereby inducted into the office of Vice-President.

At that time, the Legislature appointed the electors for the State; and the Republicans, then anticipating a defeat, had at a previous session advocated, that, for the future, these should be chosen directly

by the people in separate districts, hoping thus to secure a sufficient number to elect their Presidential candidate. The Federalists, thinking their supremacy in the assembly assured, refused to support the plan. Now, however, when it became known that their adversaries had gained a majority in the Legislature on which would devolve the duty of choosing the electors, Hamilton addressed a letter to Gov. Jay, suggesting that the present body, whose term would not expire before July, should be again convened, in order to pass a measure, which, when before proposed by the Republicans, had been denounced as unconstitutional. Jay had too much regard for principle to entertain the idea. After his death, the letter was found among his papers, endorsed, "Proposing a measure for party purposes which I think it would not become me to adopt."

It is related that a noted French duellist, when required to forgive his enemies before receiving absolution, exclaimed, "My enemies? I have none. I have killed them all!" Mr. Jefferson might have responded in the same manner, the morrow after the Presidential election. To the one party, the result seemed like the breaking up of an ice gorge — the harbinger of spring. To the other it appeared as an avalanche of French principles, destructive alike of religion and established government. Both were at fault. President Jefferson was quite as

unable to destroy the work of his predecessors as he was to depart from their policy of neutrality. The Sedition and Alien Laws soon expired by limitation; but the great measures of the former administrations were too wise, and had struck their roots too deep into the national sentiment, to be suddenly overturned. No such sweeping transformation had occurred before in American political life: the next in succession was the overthrow of the Democrats in 1840. They then rallied after their overwhelming defeat, and at the end of four years regained all that they had lost. In the present instance, the Federal as a national organization seemed to be eliminated; and, though a remnant lingered in some of the States, its power was gone, and for the future it was useful only as a scarecrow to prevent Republicans straying from the fold. Some of a new generation, restive under general proscription and unrelenting persecution, adopted the theory of the Kentucky resolutions, and lent themselves to measures which their fathers would have condemned as treason to a union they had successfully established.

Jefferson now reaped the harvest of his ten years' management, and was thenceforth the supreme deity in the Democratic pantheon. He had breathed the breath of life into the elements which he found, had organized and marshalled his followers to victory, and was looked upon as a skilful party

leader. It remained to be seen whether equal good fortune would attend him as the chief executive of the nation. Such had not been the case while he presided over the destinies of his native Virginia. It was a worthy aspiration on his part to be the chosen magistrate of a free people; but his debauchery of the press, disloyalty to the first President, and ruthless slaughtering of the reputation of those standing in the way of his advancement, must always detract from that consideration which his intellectual ability and patriotic services would otherwise demand. The private correspondence of the distinguished men of the Revolutionary era has nearly all seen the light, and the fame of the writers been enhanced thereby with the single exception of the author of the Declaration. His letters and journals, written in many cases for a special purpose, indicate great mental capacity, often combined with littleness of character; and few statesmen have given expression to more diverse opinions upon all public questions. From the time of assuming office, to judge by these writings, he failed to perceive any merit in those not engaged in the service of the party of which he was the moving spirit. Contemporary American statesmen are disparaged, and their motives impugned. After his retirement, he occupied himself in raking from the ashes of the past, as he said, "to throw light on history," petty

scandals about his rivals, which should have remained buried with the embittered conflicts which gave them birth. Jay, Marshall, Hamilton, and others, are the subject of his derogatory remarks; and, though he dared not assail Washington, he sneers at him as the supple tool of designing men.

The apologists for Jefferson, who claim that he believed the truth of what he asserted, do so at the expense of his intellect. He was too astute to give a moment's credence to such silly stories himself. It suited him to have them spread, and he did not hesitate to lend them currency. Accredited by the impress of one occupying his position, and fulminated at a time of high party excitement, they were received without the doubt their improbable nature would otherwise have occasioned. The statement that monarchical sentiments generally prevailed upon his arrival in New York, and that the leading Federalists were conspiring to found a kingdom in America, is the veriest figment of the imagination. He thus assailed those who had preserved the States from English domination, with whom a love of the whole Union was an earnest passion, whose patriotism was bounded by no State lines; men who had closely studied, and were familiar with the principles regulating Constitutional government, and knew that all authority under it must be evolved from the condition of society, and the habits and modes of

thought of the people. The belief that these men, who had just reared a symmetrical fabric, would for no apparent object now conspire to destroy their own beautiful creation, and establish one opposed to their former teachings, and foreign to the genius of the inhabitants, is too absurd to be entertained. Jefferson's success in arousing such apprehension indicates how deeply a love of Republican institutions was embedded in the hearts of the American people, and how jealous they were of a recurrence to those they had recently discarded. No other public man discovered that monarchy was favored by any individual of weight. We might properly ask, in whose interest was this attempt to restore the past to be made? There was but one person in America, who, by any possibility, could challenge sovereign rule, and he had indignantly spurned such a suggestion when made at Newburg. He had voluntarily returned to his country the sword wielded in her defence, accepted the Government only in compliance with the urgent and expressed desire of the people, and retained it contrary to his own inclination, at the earnest solicitation of Jefferson and others. Had such a change been contemplated by the Federal party, would they not have embraced the opportunity offered while the country was in a disorganized condition, to accomplish their treasonable aims, instead of pressing the establishment of

a stable government, buttressing it afterward by measures calculated to render the structure more enduring? It would have been easy for Hamilton to make confusion worse confounded, by retiring, like other New-York delegates, from the Philadelphia convention. He knew the general features of the instrument to be submitted to the people. It did not meet his full approval. He was the only representative from the State then present, and his withdrawal would have been fatal to its success. If he had been determined upon destroying the work of that body, would he, in conjunction with Jay and Livingston, have made such strenuous exertions to have the Constitution, which had been framed, ratified by the convention at Poughkeepsie? It is in such a disturbed condition of affairs as would have followed the opposition of any of these statesmen, that designing men effect the purpose charged by Jefferson.

No doubt, there still lingered in the minds of some of the patriots, an attachment to the laws, manners, and literature of a people from whose loins they had sprung. The government of their fathers had for almost a century been held up before them as a perfect model. Its constitution was the steady outgrowth of generations, and had been extolled by Montesquieu, and interpreted by Blackstone. They may have thought, that, in that of America, a greater

degree of energy should have been infused into the Executive branch; but they all gave the newly established Commonwealth a cordial support. Their letters and papers written at the time, show the loftiest patriotism and supremest loyalty. During the embittered contest then raging in Europe, they felt as Americans, and resisted the dogmatic claims of royal England on the one side, and the insidious wiles of democratic France on the other. Jay, as we have seen, was declared by the British envoy an enemy to the mother country; while later the French minister believed him opposed to Gallic pretensions.

The insinuation by Jefferson, that Hamilton corrupted the national Legislature, is entirely unsustained by evidence. The man who uses official position to corrupt others, is himself corrupt. Hamilton withdrew from the secretaryship a poor man, because of the small income derived from it. He was too honest to enrich himself at the expense of the country, and too proud to speculate in its securities. Talleyrand, then in America, expressed the situation when he said of him, "I have seen a man who had made the fortune of a nation, laboring all night to support his family." Jefferson's own secretary, Gallatin, with a magnanimity and candor that redound to his credit, informs us that he was instigated by his chief to search the archives of the Treasury, —

both of them hoping to convict Hamilton, — but he discovered "the most perfect system." "Hamilton," he said, "made no blunders, committed no fraud." His financial proceedings were of the same character as those he had advocated before entering upon office, and he believed their enactment would promote the welfare of the whole country. The funding of the national debt and the assumption of those of the States were wise and just measures of themselves. The bank he had recommended from his tent during the Revolution. They were intended to save American honor, and revive American credit. That they should operate to enlist all sections of the Union in maintenance of the General Government, was desirable, and, perhaps, not unexpected; but we have no reason to suppose that improper means were employed by him to secure their passage. Fisher Ames, then a representative from Massachusetts, testifies of the Congress that enacted these, "I have never seen an assembly where so little art was used: there was no intrigue, no caucussing, little of clanning together." This is certainly not the picture of a corrupt body. The only bargaining in the case was made at Jefferson's own table, and under his auspices, when two Virginia members agreed to vote for the assumption bill, provided the national capital should be placed on the borders of their own State. Adams's overweening vanity, and jealousy of

Hamilton, the opposition of the latter to his re-election, and a consequent division within the party, combined with the inconsiderate laws passed during the French craze, and the President's capricious management of foreign affairs, so weakened the hold of the Federalists upon public confidence, that the charges emanating from Jefferson, and industriously circulated, had, in the excited condition of the public mind, a decided influence in hastening their fall. It is doubtful, however, whether, under more favorable circumstances, they could have retained authority for many years longer. The important work of the Federalists was accomplished. They had become conservative rather than progressive, and strove to preserve, amid revolutions, the institutions they had founded. They were not in accord with the spirit of the age, that would break away from the past, and explore the boundless field of political science. They clung to ancient traditions, were incapable of advancing; and the organization, therefore, died with the century of its birth. A younger generation, with new ideas, thenceforth assumed the lead. The seat of government was removed to the banks of the Potomac, and "Tom Jefferson," at the inauguration, riding to the capital alone, and hitching his horse to a tree, was typical of the new era which had opened upon the country.

We should search the pages of history in vain to

find another party as rich in men of eminent ability, lofty rectitude, and unsullied patriotism, as the one just displaced. While some of its leaders, like Pickering, continued embittered to the end, others, when they laid aside public affairs, laid aside personal asperities, and passed life's Indian summer, cheered by the reflection of obligations to the nation conscientiously fulfilled. "All the ends they aimed at were their country's." They realized the great destiny the future had in store for her, and reared a structure strong enough for an increasing population and extending territory. They were called upon to lay broad the groundwork of American nationality; to establish a government novel in character; organize a judiciary; revive commerce; create a system of revenue; provide for the national debt, and secure American neutrality amid wars, which, like the air of heaven, swept over every land and sea. Such were the duties imposed on them, and time has manifested the wisdom and fidelity with which they were discharged.

The result of their labors was a Constitution subjected to a strain which none other could have endured, yet striking its roots deeper and deeper into the national life, — the ideal and pattern for all peoples; a judiciary paramount in its decisions, with an unblemished record; a system of revenue in force down to the present generation; the debt extin-

guished, while the twin-stars of American nationality and American neutrality, which they called into being, have guided the country from financial ruin to its present high degree of prosperity. As has been justly said, "History has yet to record the names of statesmen whose principles were more sound, whose policy was more just and sagacious, who better understood the hazards of liberty and the metes and bounds of freedom, whose political conduct was more high-minded, magnanimous, and pure. However they may have been assailed, it can never be forgotten that of these were Washington, Adams, Hamilton, Jay, Wolcott, and others like them, — names illustrious and venerated all over the world; that to these, in a large part, belongs the honor of framing the Constitution, and securing its acceptance; and that their legitimate successors have been its ablest expounders, and most eloquent defenders." By them was mainly produced what Gladstone has pronounced "the most wonderful work ever struck off at a given time by the brain and purpose of man." In no other system of government has the average of human intelligence been greater, nor the education, material prosperity, and happiness of the people more largely promoted.

After twelve years of successful administration, the Federalists were overthrown, and, with scorn and contumely, driven into outer darkness. Has time

placed its approving seal upon their political principles? The difference between the Republican, or Democratic, party and its adversary was based chiefly on the relation borne by the States to the General Government, and the extent of the powers which had been conferred upon it. Other divisions between them had reference to questions of expediency. It was admitted by all that the late Confederation possessed no absolute sovereignty, but the Federalists maintained that such had now been granted to the central authority; that by section 10, article 1, of the Constitution, the States were prohibited from the exercise of certain rights, and what remained, being qualified and conditional, was no sovereignty at all. They believed that the autonomy of the separate States was preserved and protected by Federal courts, empowered to pass judgment upon all laws enacted by the two Houses with the approval of the President. Should this not be a sufficient barrier against encroachments, they had the means, through their representatives and senators, of procuring the repeal of unconstitutional statutes. Hence they reasoned, that with an organic law, ratified by the inhabitants of each member of the Confederacy, and under which the enactments were controlled by public opinion, and subsequently reviewed by the Supreme Court, no danger of trespass was to be apprehended, and nullification was a claim to judicial power by the

States, which had no warrant in the Constitution. Jefferson, on the other hand, contended for the independence of the several States; and in his celebrated Kentucky resolutions, as originally framed, advanced theories which logically led to nullification and the disruption of the American Union. Indeed, Calhoun proclaimed them "the Nullifiers' Bill of Rights." After sixty years of skirmishing, these opposite constructions of the Constitution were brought, practically, face to face on the line of battle, when an outburst of national sentiment crushed the upholders of the resolutions, and declared it to be the immutable American polity, that the government of the nation is endowed with the faculty of self-preservation, and that the supremacy of the Union extends over the whole country. The seal of nationality was affixed at Appomattox.

When the people were first brought into direct connection with the National Government, its operations were watched with a jealous eye by its constituent members. State pride predominated, and the first President sometimes found trouble in inducing suitable persons to leave the service of their States to assume office. It was even a question of etiquette whether President Washington or Gov. Hancock should make the first call on the other. The tendency is always to gravitate to the superior body; and to-day, from the rising

of the sun to the going down thereof, every eye is directed to the Capitol of the nation, as the face of the Moslem is turned to the tomb of the prophet whence all blessings proceed. The expansion of territory, vast increase of material wealth, and new conditions of society, have brought with them new duties, whose fulfilment is in many cases beyond the ability of the States; and, without arousing their jealousy, the General Government has assumed some of them: and the inclination is to impose still others, and to confer enlarged authority upon it. It is now exercising higher powers than the most extreme Federalist ever claimed for it. Yet there is no possibility of centralization so long as the principle of local self-government is preserved. The more numerous the States, and the greater the diversity of interests among them, the less danger to this distinctive feature of American institutions. The danger rather lies in corrupt politicians under the forms of law intrenching themselves in office, and wielding its power for their own aggrandizement. 'Crises often arise in the conduct of national affairs when cherished opinions must be sacrificed;' and Madison, Jackson, and even Jefferson himself, during their terms of office, sanctioned measures, which, at another time, would have been stigmatized as essentially Federal in character. They proved advantageous to the country, and, instead of being

censured, these statesmen are entitled to commendation for rising superior to party consistency; and their political successors should learn charity from it, and cease to visit with opprobrium the men who maintained the principles of the earlier administrations. The experience thus acquired, should, besides, teach all that the real constitution of a nation lies deeper than its visible ordinances, and that artificial compacts and party principles will always be interpreted by the tendencies of society; for *salus populi suprema est lex* is as true in America to-day as when first enunciated.

XXIII.

AT BEDFORD.

HAVING determined to retire, Jay declined another nomination for governor, saying that the period had now arrived, at which for many years he had intended giving up public affairs. The President, with the purpose of "marking the spot where the greatest mass of worth remained collected in one individual," spontaneously nominated him, and the Senate again confirmed his appointment as chief justice of the Supreme Court; but even this tribute to his virtue failed to shake his determination, and the position was for a generation filled by that pre-eminent jurist and able expounder of the Constitution, John Marshall.

If Jefferson joyfully entered upon the important duties to which he had been at last called by his fellow-citizens, it was with no less satisfaction that Jay, during the following summer, sought the repose of private life. Few statesmen ever had less reason to be disgusted with political office; yet he beheld with pleasure the approach of a time, when, without

neglecting his country, he could consult his own inclination, and withdraw from public service. He was in his fifty-seventh year, with vigor unimpaired, and in the meridian of his fame and honor. With most men at this age, the fire of ambition is still burning, and what they have already achieved is but the starting-point for further advances toward an ever receding goal. Jay's mind was eminently contemplative, and his domestic affections strong, thus fitting him for the quiet of the country. He had inherited from his mother the large estate of Bedford, situated about fifty miles from the city of New York; and he now took up his residence at that secluded place. Since the evacuation of the British forces, it had been occupied only by tenants, and was, in consequence, in a neglected and dilapidated condition. While governor, he had begun the erection of a commodious dwelling upon a portion of the tract; and the superintendence of this, and the renovation of the land, promised to furnish him with ample employment for many years to come.

Before leaving Albany, the health of Mrs. Jay had begun to fail; and, as the noise and bustle of the mechanics about the building would render the house unsuitable for an invalid, she was for some weeks unable to join her husband in their new home. She had been intimately associated with all his plans of retirement, and every arrangement made had

reference to her continued presence with him. Though she had necessarily spent many years in the fashionable world, she looked forward with satisfaction to the privacy of the country. Her anticipations were realized for only a few months, during which time she was able to write to a friend, "I can truly say that I have never enjoyed so much comfort as I do here." Within a year after her removal, she was seized with a severe illness, which in a few days terminated fatally. Jay, calm and collected, watched by her bedside until the last, when, with a spirit that partook of his Huguenot progenitor, he led his children into an adjoining room, and, with a firm voice, read to them the fifteenth chapter of Corinthians. The married life of Mrs. Jay and her husband had for the entire period been one of unclouded happiness.

> "Two such silver currents when they join,
> Do glorify the banks that bound them in."

She had been his chosen companion, sharing his hopes and aspirations, his cares and anxieties — a helpmeet in all things. Their griefs, too, had been common; for they had mingled their tears over the graves of their children, and sorrowed together at the loss of their parents and friends. She had graced the drawing-room of the first President at Philadelphia, and presided with dignity over the

governor's household at Albany. She was the leader of society in America when this implied more than mere social elevation. Extreme simplicity of apparel and manners had been inaugurated by the French Revolution, and it was for the Federalists — male and female — to preserve the stately dignity and grace of the *ancien régime* from being swept away. Her beauty, amiability, culture, and vivacity made her the charm of the circle in which she moved; while her steadfast adherence to the fortunes of the country, won for her the respect and kindly feeling of those who disapproved of the political principles of her husband.

It might be supposed that the loss of his wife, and the sudden and total change to the seclusion of Bedford, would have produced in Jay a feeling of loneliness, weariness, and *ennui;* but his remaining years were tranquilly and happily passed in the management of his property, in the company of his books and the distinguished persons who from time to time sought him out, and in the performance of those minor duties required of all. When asked how it was possible to occupy his mind, he replied with a smile, "I have a long life to look back upon, and an eternity to look forward to." Modern literature possessed little attraction for him. To use his own language, he preferred to converse with the mighty dead of earlier times. He daily

and carefully perused the Scriptures, and, during his last illness, referred his children to them as the foundation upon which his faith rested. He was naturally desirous for their general diffusion, and took a deep interest in the progress of the American Bible Society. Upon the decease of Boudinot, the venerable president of that organization, he was elected to fill the vacancy, but hesitated to occupy the position until assured that little further service would be demanded of him than the preparation of an annual address. As the head of the institution he acceptably discharged its functions for seven years. Though he no longer participated in national concerns, he anxiously watched the storms gathering over them, and displayed also a marked interest in affairs of the neighborhood, mingling with his fellow-citizens, and, when able, never failing to cast his vote at elections, even when only for town officers.

Regarding expensive decorations as inconsistent with the simplicity which should characterize American rural life, he constructed his buildings in a plain, substantial manner, of the best material to be procured, and with a direct view to the uses for which they were intended. A friend who had spent some days with him, observing this trait, remarked that Gov. Jay in all his conduct seemed to have reference to perpetuity in this world, and eternity in the next. He would not give a name to his extended estate,

nor allow it to be termed a seat or a place, but simply a farm. All his stock was of the best, well provided for, and never overworked; and his operations were profitable to his poor neighbors rather than to himself. In age and solitude, when social discipline is removed, men of worldly minds are apt to become morose, and selfish ones peevish. Jay, however, grew more gentle and kindlier with age, more thoughtful of the comfort of others, and more indifferent to his own, until at length not a child could approach him, nor a servant do his bidding, without receiving from him some word or look indicative of kind feeling. Being now master of his time, the habits of the "good old governor" were very regular. He was an early riser, cutting a hole in the solid shutter, that the first rays of the sun might fall upon his pillow, and rouse him from sleep. When the weather permitted, he spent most of the morning on horseback, riding about the grounds, and directing the laborers. After dinner it was his custom to indulge moderately in smoking, and his evenings were devoted to reading and intercourse with his family and others. Blessed with an independence, his expenditures were yet regulated by a judicious economy; and he was thus enabled to respond freely to every call for benevolent purposes, or objects calculated to promote the general welfare.

By education and conviction, he was an ear-

nest Episcopalian. At the time of his removal to Bedford, there was no organized body of that denomination in the neighborhood; and he therefore worshipped with the Presbyterians, until by his exertions, and mainly by his aid, a parish church was built. He regularly contributed to its support, and at his death bequeathed a liberal sum to its pastor; but his reluctance to hold office led him to decline taking any part in its government. In the differences between the high and low church, he sided with the latter, and would have carried into ecclesiastical affairs the same ideas that inspired his political action. When the edifice that he had helped to erect was about to be consecrated, some innovations in the usual ceremonies were proposed by the authorities of Trinity, New York, against which, as the organ of the vestry, he thus protested: "We believe that Episcopacy was of apostolic institution; but we do not believe in the various high-church doctrines and prerogative, which art and ambition, triumphing over credulity and weakness, have annexed to it. Ever encroaching on the rights of government and of the people, they have constantly found it convenient to incorporate as far as possible the claims of the clergy with the principles of religion; and the advocates have not ceased to preach for Christian doctrine, the commandments and desires of men. High-church doctrines are not

accommodated to the state of society, nor to the tolerant principles, nor the ardent love of liberty, which prevail in our country."

A weekly mail supplied him with information of events transpiring in the outside world; and he watched with interest the mighty struggle going on in Europe, and particularly the controversy that had arisen between America and England, which culminated in the war of 1812. Although this did not disturb his retirement, it led him once again to mingle in the counsels of his political friends in the State; and he wrote to one of these, "In my opinion, the war is not necessary nor expedient nor seasonable; yet, having been Constitutionally declared, the people are evidently bound to support it in the manner in which Constitutional laws shall prescribe." He was far from regarding his own country as entirely at fault, or holding Great Britain blameless. War is at all times a harsh remedy for imputed wrong, and the progress of civilization is indicated by the amelioration of its hardships. Jay had realized in the American Revolution the injustice of confiscating private debts during national hostilities, and the wisdom of the tenth article in his celebrated treaty was now strikingly displayed. This stipulated, that, under such circumstances, they should not be sequestrated. It will be remembered, that, in the prolonged debate in Congress, this article was

denounced by Madison as the abandonment of a powerful means of offensive warfare against Great Britain. She, at that time, was the creditor nation; but now the situation was reversed, and her merchants had become indebted to those of America for many millions, which, under Madison's own administration, were preserved to his country, showing that justice and true policy are identical.

We have already alluded to Jay's sentiments on the subject of domestic slavery. Believing that holding human beings in bondage was inconsistent with the teachings of Christianity, and adverse to the principles upon which independence rested, he had labored as a private citizen to mitigate the consequent evils in his native State, and, as governor, had finally succeeded in having emancipation ingrafted upon its civil policy. When, therefore, the Missouri question was agitating the country, and threatening a disruption of the Union, his opinion as to the power of Congress to prohibit slavery within the borders of a proposed State was sought by those who advocated such a restriction, the reply was of the character doubtless anticipated from a person entertaining his views of the Federal Constitution. He said that slavery ought not to be introduced or permitted in any of the new States, and that it should be gradually circumscribed and abolished in all. He believed, further, that the importa-

tion clause in the Constitution conferred upon Congress the right to prohibit the migration of slaves into any of the Territories or newly formed States. It is needless to say that these opinions were too radical to meet the approval of any American statesman of that day. Had they generally prevailed, and been embodied in legislation, slavery would have been confined to its original domain, and have died of asphyxia, without the vast expenditure of blood and treasure ultimately found necessary for its destruction.

Notwithstanding the infirmities incident to his years, Jay enjoyed an old age of remarkable tranquillity. Like a stream approaching the ocean, life seemed to flow steadily onward in quietness and beauty to the end. A generation had come forward "which knew not Joseph;" and with the one passing away were buried many of the calumnies with which he had been assailed. His long retirement had exempted him from engaging in the conflicts and animosities of modern parties, and near posterity learned to revere him for his distinguished services, and the spotless purity of his character. For many years each recurrence of Independence Day had served to mark advances in the material prosperity of the American people. Since the formation of the government, the country had more than doubled both its area and population. The clouds which had obscured the horizon a few years before were now dis-

persed, and "the era of good feeling" was restored. It was determined to celebrate the fiftieth anniversary of the Declaration, near at hand, with more than ordinary pomp and festivity. Two members of the committee that had reported it — its author and the one that enforced its adoption upon Congress — still survived; and it was deemed eminently appropriate that he, too, who had so greatly aided in rendering the instrument effective, should participate in ceremonies suitable to the occasion. When replying to the invitation from the municipal authorities of New York, Jay said, "I cannot forbear to embrace the opportunity thus afforded, to express my earnest hope that the peace, happiness, and prosperity enjoyed by our beloved country may induce those who direct her national counsels, to *recommend* a general and public return of praise and thanksgiving to Him from whose goodness these blessings descend." This letter, directing his countrymen to that Power whose arm he felt supporting him while descending into the dark valley, was among his last productions.

The end, now rapidly approaching, was awaited without fear. On the evening of May 14, 1829, he retired apparently in his usual health, but during the night was stricken with palsy. He lingered until noon of the 17th, when he expired, in the eighty-fourth year of his age. His death was in strict keeping with his life. He had outlived nearly all of his

early political associates. Of the members of the old Congress, Adams and Jefferson, with its secretary, Thomson, had recently died, leaving the venerable Carroll, as Mr. Webster said, "like an aged oak upon the plain." He, too, soon fell, the last of the giants of those days. By his own request, Jay was buried without ostentation, and the money thereby saved was devoted to the relief of a neighboring widow and her family.

The announcement of his death was received with general regret, and called forth tributes to his memory from public bodies and private citizens in all parts of the Union. The bar connected with the highest tribunal of his own State — men who knew him personally — thus testified their appreciation of his character: "While his private virtues and public worth have justly endeared him to the nation, his patriotism, great talents as a statesman, and his great acquirements as a jurist, and his eminent purity as a Christian, and his probity as a man, all unite to present him to the public as an example whose radiance points to the attainment of excellence."

XXIV.

CONCLUSION.

A MAN'S character is to be sought in the record of his life, yet this brief sketch of Jay's career necessarily leaves unsaid, much that is essential in forming a proper estimate of him.

The mind of the first chief justice was vigorous, well balanced, and governed by enlightened moral faculties: hence his judgment was exact, logical, and discriminating. His deficiencies were, perhaps, a want of imagination, — the efficient handmaid to reason, — and a lack of that humor which gives zest to the driest logic. In the correspondence and other papers emanating from his pen, we seldom find a figure of speech employed to illustrate his meaning, and discover no trace of wit to enliven his familiar discourse. His great characteristic was superior wisdom in seeing clearly the right as distinguished from the expedient, and following it firmly and patiently. He was not a full man, in the sense of Lord Bacon, his knowledge having been mainly acquired from intercourse with others: neither was it deepened by study,

nor broadened by culture. He was thoroughly imbued with the spirit of truth and loyalty to duty, as was manifested in all his public positions and private relations. Without guile, he could yet hide what should be concealed; but what was revealed carried with it, to truthful men, the conviction of truth. This straightforwardness baffled the jugglery of the Spanish and French diplomats, won Oswald and Shelburne to his views, and led sturdy John Adams to exclaim, "When my confidence in Mr. Jay shall cease, I must give up the cause of confidence, and renounce it in all men."

He was exact in his expenditures, and liberal in his charities. His wants in all cases conformed to his means, and his soundness of judgment was illustrated by the investments that he made. At a private meeting, Hamilton and Robert Morris recommended buying new lands: Jay, on the other hand, advocated suburban property. By their respective purchases, the first lost money, the second was ruined, while the third realized a profit.

Jay was by nature of a quick temper; but like Washington, whom he resembled in many traits, he early brought it under control. The principles regulating his life were formed ere manhood was reached, and lived out with unswerving fidelity: hence his conduct was consistent throughout. His manners were grave and not engaging to strangers, inspiring

respect rather than affection. He was a man of great sincerity, and claimed never to have lost a friend through an act of his; but his confidence once forfeited was never regained. Its loss left no enmity behind, yet the impression was ineffaceable.

He was without sufficient ambition to make the necessary sacrifice for the possession of power: neither was he bold and enterprising enough to become a political leader. His desires seemed to be, to meet the approval of his own conscience, and to win the esteem of the wise and good; and there is nothing to indicate that he ever sought popularity or public station: hence his refusal to even entertain Hamilton's scheme to defeat Jefferson.

The life of John Jay was that of an humble Christian, pure and undefiled; and we shall search in vain among the public men of the age, for one possessing greater virtue or more unselfish patriotism. As was said of another in the olden time, "He did that which was right in the sight of the Lord, and turned not aside to the right or the left hand."

APPENDIX A.

ADDRESS TO THE PEOPLE OF GREAT BRITAIN.

FRIENDS AND FELLOW-SUBJECTS, — When a nation led to greatness by the hand of liberty, and possessed of all the glory that heroism, munificence, and humanity can bestow, descends to the ungrateful task of forging chains for her friends and children, and, instead of giving support to freedom, turns advocate for slavery and oppression, there is reason to suspect she has either ceased to be virtuous, or been extremely negligent in the appointment of her rulers.

In almost every age, in repeated conflicts, in long and bloody wars, as well civil as foreign, against many and powerful nations, against the open assaults of enemies, and the more dangerous treachery of friends, have the inhabitants of your island, your great and glorious ancestors, maintained their independence, and transmitted the rights of men and the blessings of liberty to you, their posterity.

Be not surprised, therefore, that we, who are descended from the same common ancestors; that we, whose forefathers participated in all the rights, the liberties, and the Constitution you so justly boast of, and who have carefully conveyed the same fair inheritance to us, guaranteed by the

plighted faith of government, and the most solemn compacts with British sovereigns, — should refuse to surrender them to men who found their claims on no principles of reason, and who prosecute them with a design, that, by having *our* lives and property in their power, they may with the greater facility enslave *you*.

The cause of America is now the object of universal attention: it has at length become very serious. This unhappy country has not only been oppressed, but abused and misrepresented; and the duty we owe to ourselves and posterity, to your interest and the general welfare of the British Empire, leads us to address you on this very important subject.

Know, then, that we consider ourselves, and do insist that we are and ought to be, as free as our fellow-subjects in Britain, and that no power on earth has a right to take our property from us without our consent.

That we claim all the benefits secured to the subject by the English Constitution, and particularly that inestimable one of trial by jury.

That we hold it essential to English liberty, that no man be condemned unheard, or punished for supposed offences, without having an opportunity of making his defence.

That we think the Legislature of Great Britain is not authorized to establish a religion fraught with sanguinary and impious tenents, or to erect an arbitrary form of government in any quarter of the globe. These rights, we, as well as you, deem sacred. And yet, sacred as they are, they have, with many others, been repeatedly and flagrantly violated.

Are not the proprietors of the soil of Great Britain lords of their own property? Can it be taken from them without their consent? Will they yield it to the arbitrary disposal of any man or any number of men whatever? You know they will not.

Why, then, are the proprietors of the soil of America less lords of their property than you are of yours? or why should they submit it to the disposal of your Parliament, or any other parliament or council in the world not of their election? Can the intervention of the sea that divides us cause disparity in rights? or can any reason be given why English subjects, who live three thousand miles from the royal palace, should enjoy less liberty than those who are three hundred miles distant from it?

Reason looks with indignation on such distinctions, and freemen can never perceive their propriety. And yet, however chimerical and unjust such discriminations are, the Parliament asserts that they have a right to bind us in all cases without exception, whether we consent or not; that they may take and use our property, when and in what manner they please; that we are pensioners on their bounty for all that we possess; and can hold it no longer than they vouchsafe to permit. Such declarations we consider as heresies in English politics, and which can no more operate to deprive us of our property, than the interdicts of the pope can divest kings of sceptres which the laws of the land and the voice of the people have placed in their hands.

At the conclusion of the late war, — a war rendered glorious by the abilities and integrity of a minister to whose

efforts the British Empire owes its safety and its fame, — at the conclusion of this war, which was succeeded by an inglorious peace, formed under the auspices of a minister of principles and of a family unfriendly to the Protestant cause, and inimical to liberty; we say at this period, and under the influence of that man, a plan for enslaving your fellow-subjects in America was concerted, and has ever since been pertinaciously carrying into execution.

Prior to this era, you were content with drawing from us the wealth produced by our commerce. You restrained our trade in every way that could conduce to your emolument. You exercised unbounded sovereignty over the sea. You named the ports and nations to which alone our merchandise should be carried, and with whom alone we should trade; and though some of these restrictions were grievous, we nevertheless did not complain; we looked up to you as to our parent State to which we were bound by the strongest ties, and were happy in being instrumental to your prosperity and grandeur.

We call upon you, yourselves, to witness our loyalty and attachment to the common interest of the whole empire. Did we not in the last war add all the strength of this vast continent to the force which repelled our common enemy? Did we not leave our native shores, and meet disease and death, to promote the success of British arms in foreign climates? Did you not thank us for our zeal, and even reimburse us large sums of money, which, you confessed, we had advanced beyond our proportion, and far beyond our abilities? You did.

To what causes, then, are we to attribute the sudden

change of treatment, and that system of slavery which was prepared for us at the restoration of peace?

Before we had recovered from the distresses which ever attend war, an attempt was made to drain this country of all its money by the oppressive Stamp Act. Paints, glass, and other commodities which you would not permit us to purchase of other nations, were taxed. Nay, although no wine is made in any country subject to the British state, you prohibited our procuring it of foreigners without paying a tax imposed by your Parliament on all we imported. These, and many other impositions, were laid upon us most unjustly and unconstitutionally, for the express purpose of raising a revenue. In order to silence complaint, it was indeed provided, that this revenue should be expended in America for its protection and defence. These exactions, however, can receive no justification from a pretended necessity of protecting and defending us. They were lavishly squandered on court favorites and ministerial dependants, generally avowed enemies to America, and employing themselves by partial representation to traduce and embroil the colonies. For the necessary support of Government here, we ever were, and ever shall be, ready to provide. And whenever the exigencies of the State may require it, we shall, as we have heretofore done, cheerfully contribute our full proportion of men and money. To enforce this unconstitutional and unjust scheme of taxation, every fence that the wisdom of our British ancestors had carefully erected against arbitrary power, has been violently thrown down in America, and the inestimable right of trial by jury taken away in cases that touch life and property. It was

ordained, that whenever offences should be committed in the colonies against particular acts, imposing various duties and restrictions upon trade, the prosecutor might bring his action for the penalties in the courts of admiralty, by which means the subject lost the advantage of being tried by an honest, uninfluenced jury of the vicinage, and was subjected to the sad necessity of being judged by a single man, the creature of the crown, and according to the course of law which exempts the prosecutor from the trouble of proving his accusation, and obliges the defendant either to evince his innocence or to suffer. To give this new judicatory the greater importance, and as if with design to protect false accusers, it is further provided that the judge's certificate of there having been probable cause of seizure and prosecution, shall protect the prosecutor from actions at common law for recovery of damages.

By the course of our laws, offences committed in such of the British dominions in which courts are established, and justice duly and regularly administered, shall be there tried by a jury of the vicinage. Then the offenders and witnesses are known, and the degree of credibility to be given to their testimony can be ascertained.

In all these colonies, justice is regularly and impartially administered; and yet, by the construction of some, and the direction of other Acts of Parliament, offenders are to be taken by force, together with all such persons as may be pointed out as witnesses, and carried to England, there to be tried in a distant land by a *jury of strangers*, and subject to all the disadvantages that result from want of friends, want of witnesses, and want of money.

When the design of raising a revenue from the duties imposed on the importation of tea into America, had, in a great measure, been rendered abortive by our ceasing to import that commodity, a scheme was concerted by the ministry with the East-India Company, and an Act passed, enabling and encouraging them to transport and vend it in the colonies. Aware of the danger of giving success to this insidious manœuvre, and of permitting a precedent of taxation thus to be established among us, various methods were adopted to elude the stroke. The people of Boston, then ruled by a governor, whom, as well as his predecessor Sir Francis Bernard, all America considers as her enemy, were exceedingly embarrassed. The ships which had arrived with the tea were, by his management, prevented from returning. The duties would have been paid, the cargoes landed, and exposed to sale: a governor's influence would have procured and protected many purchasers. While the town was suspended by deliberations on this important subject, the tea was destroyed. Even supposing a trespass was thereby committed, and the proprietors of the tea entitled to damages, the courts of law were open, and judges appointed by the crown presided in them. The East-India Company, however, did not think proper to commence any suits; nor did they even demand satisfaction, either from individuals, or from the community in general. The ministry, it seems, officiously made the case their own, and the great council of the nation descended to intermeddle with a dispute about private property. Divers papers, letters, and other unauthenticated *ex parte* evidence, were laid before them; neither the persons who destroyed the tea, nor

the people of Boston, were called upon to answer the complaint. The ministry, incensed by being disappointed in a favorite scheme, were determined to recur from the little arts of *finesse*, to open force and unmanly violence. The port of Boston was blocked up by a fleet, and an army placed in the town. Their trade was to be suspended, and thousands reduced to the necessity of gaining subsistence from charity, till they should submit to pass under the yoke, and consent to become slaves by confessing the omnipotence of Parliament, and acquiescing in whatever disposition they might think proper to make of their lives and property.

Let justice and humanity cease to be the boast of your nation. Consult your history, examine your records of former transactions; nay, turn to the annals of the many arbitrary states and kingdoms that surround you, and show us a single instance of men being condemned to suffer for imputed crimes, unheard, unquestioned, and without even the specious formality of a trial — and that, too, by laws made expressly for the purpose, and which had no existence at the time of the act committed. If it be difficult to reconcile these proceedings to the genius and temper of your laws and Constitution, the task will become more arduous when we call upon our ministerial enemies to justify, not only condemning men untried and by hearsay, but involving the innocent, in one common punishment, with the guilty; and for the act of thirty or forty, to bring poverty, distress, and calamity on thirty thousand souls, and those not your enemies, but your friends, brethren, and fellow-subjects.

It would be some consolation to us if the catalogue of American oppressions ended here. It gives us pain to be

reduced to the necessity of reminding you, that, under the confidence reposed in the faith of government pledged in a royal charter from a British sovereign, the forefathers of the present inhabitants of Massachusetts Bay left their former habitations, and established that great flourishing and loyal colony. Without incurring, or being charged with, a forfeiture of their rights, without being heard, without being tried, without law, and without justice, by an Act of Parliament their charter is destroyed, their liberties violated, their Constitution and form of government changed; and all this, upon no better pretence than because in one of their towns a trespass was committed on some merchandise, said to belong to one of the companies, and because the ministry were of opinion that such high political regulations were necessary to compel due subordination and obedience to their mandates.

Nor are these the only capital grievances under which we labor. We might tell of dissolute, weak, and wicked governors having been set over us; of legislatures being suspended for asserting the rights of British subjects; of needy and ignorant dependants on great men, advanced to the seats of justice, and to other places of trust and importance; of hard restrictions on commerce; and a great variety of lesser evils, the recollection of which is almost lost under the weight and pressure of greater and more poignant calamities.

Now mark the progression of the ministerial plan for enslaving us. Well aware that such hardy attempts to take our property from us, to deprive us of the valuable right of trial by jury, to seize our persons and carry us for trial to

Great Britain, to blockade our ports, to destroy our charters, and change our form of government, would occasion, and had already occasioned, great discontent in the colonies, which might produce opposition to these measures, an Act was passed to protect, indemnify, and screen from punishment, such as might be guilty even of murder, in endeavoring to carry their oppressive edicts into execution; and by another Act the Dominion of Canada is to be so extended, modelled, and governed, as that by being disunited from us, detached from our interests by civil as well as religious prejudices, that by their numbers daily swelling with Catholic emigrants from Europe, and by their devotion to an administration so friendly to their religion, they might become formidable to us, and, on occasion, be fit instruments in the hands of power to reduce the ancient free Protestant colonies to the same state of slavery with themselves.

This was evidently the object of the Act; and in this view, being extremely dangerous to our liberty and quiet, we cannot forbear complaining of it as hostile to British America. Superadded to these considerations, we cannot help deploring the unhappy condition to which it has reduced the many English settlers, who, encouraged by the royal proclamation, promising the enjoyment of all their rights, have purchased estates in that country. They are now the subjects of an arbitrary government, deprived of trial by jury, and, when imprisoned, cannot claim the benefit of the Habeas Corpus Act, that great bulwark and palladium of English liberty. Nor can we suppress our astonishment that a British parliament should ever consent to establish in that country a religion that has deluged your

island with blood, and dispersed impiety, bigotry, persecution, murder, and rebellion through every part of the world.

This being a state of facts, let us beseech you to consider to what end they lead. Admit that the ministry, by the powers of Britain and the aid of our Roman-Catholic neighbor, should be able to carry the point of taxation, and reduce us to a state of perfect humiliation and slavery. Such an enterprise would doubtless make some addition to your national debt, which already presses down your liberties, and fills you with pensioners and placemen. We presume also that your commerce will somewhat be diminished. However, suppose you should prove victorious, in what condition will you then be? What advantages or what lands will you reap from such a conquest? May not a ministry with the same armies enslave you? It may be said you will cease to pay them; but remember the taxes from America, the wealth, and, we may add, the men, and particularly the Roman Catholics, of this vast continent, will then be in the power of your enemies; nor will you have reason to expect, that, after making slaves of us, many among us should refuse to assist in reducing you to the same abject state.

Do not treat this as chimerical. Know that in less than half a century, the quit rents reserved to the crown from the numberless grants of this vast continent, will pour large streams of wealth into the royal coffers; and if to this be added the power of taxing America at pleasure, the crown will be rendered independent of you for supplies, and will possess more treasure than may be necessary to purchase

the remains of liberty in your island. In a word, take care that you do not fall into the pit that is preparing for us.

We believe there is yet much virtue, much justice, and much public spirit, in the English nation. To that justice we now appeal. You have been told that we are seditious, impatient of government, and desirous of independence. Be assured that these are not facts, but calumnies. Permit us to be as free as yourselves, and we shall ever esteem a union with you to be our greatest glory, and our greatest happiness; we shall ever be ready to contribute all in our power to the welfare of the empire; we shall consider your enemies as our enemies, and your interest as our own.

But if you are determined that your ministers shall wantonly sport with the rights of mankind; if neither the voice of justice, the dictates of law, the principles of the Constitution, or the suggestions of humanity, can restrain your hands from shedding human blood in such an impious cause, — we must then tell you that we will never submit to be hewers of wood, or drawers of water, for any ministry or nation in the world.

Place us in the same situation as we were at the close of the last war, and our former harmony will be restored. But lest the same supineness, and the same inattention to our common interest, which you have for several years shown, should continue, we think it prudent to anticipate the consequences.

By the destruction of the trade of Boston, the ministry have endeavored to induce submission to their measures. The like fate may befall us all. We will endeavor, therefore, to live without trade, and recur for subsistence to

the fertility and bounty of our native soil, which affords us all the necessaries and some of the conveniences of life. We have suspended our importation from Great Britain and Ireland, and in less than a year's time, unless our grievances should be redressed, shall discontinue our exports to those kingdoms and the West Indies.

It is with the utmost regret, however, that we find ourselves compelled, by the overruling principles of self-preservation, to adopt measures detrimental in their consequences to numbers of our fellow-subjects in Great Britain and Ireland; but we hope that the magnanimity and justice of the British nation will furnish a parliament of such wisdom, independence, and public spirit, as may save the violated rights of the whole empire from the devices of wicked ministers and evil counsellors, whether in or out of office, and thereby restore that harmony, friendship, and fraternal affection between all the inhabitants of his majesty's kingdoms and territories, so ardently wished for by every true and honest American.

APPENDIX B.

THE CONSTITUTIONAL RIGHT TO SUE A STATE OF THE UNION.

CHISHOLM, EXECUTOR, *versus* GEORGIA.

[*Jay's Opinion as reported by Dallas.*]

THE question we are now to decide has been accurately stated; viz., Is a State suable by individual citizens of another State?

It is said that Georgia refuses to appear and answer to the plaintiff in this action, because she is a sovereign State, and, therefore, not liable to such actions. In order to ascertain the merits of this objection, let us inquire, 1st, In what sense Georgia is a sovereign State; 2d, Whether suability is incompatible with such sovereignty; 3d, Whether the Constitution — to which Georgia is a party — authorizes such an action against her. Suability and suable are words not in common use, but they concisely, correctly convey the idea annexed to them.

First: In determining the sense in which Georgia is a sovereign State, it may be useful to turn our attention to the political situation we were in prior to the Revolution, and to the political rights which emerged from the Revolution. All the country now possessed by the United States, was

then a part of the dominions appertaining to the crown of Great Britain. Every acre of land in this country was then held, mediately or immediately, by grants from that crown. All the people of this country were then subjects of the king of Great Britain, and owed allegiance to him; and all the civil authority then existing, or exercised here, flowed from the head of the British Empire. They were, in strict sense, *fellow*-subjects, and, in a variety of respects, one people. When the Revolution commenced, the patriots did not assert that only the same affinity and social connection subsisted between the people of the colonies, which subsisted between the people of Gaul, Britain, and Spain, while Roman provinces; viz., only that affinity and social connection which result from the mere circumstance of being governed by the same prince. Different ideas prevailed, and gave occasion to the Congress of 1774 and 1775.

The Revolution, or rather the Declaration of Independence, found the people *already* united for general purposes, and, at the same time, providing for their more domestic concerns by State conventions, and other temporary arrangements. From the crown of Great Britain the sovereignty of their country passed to the people of it; and it was not then an uncommon opinion that the unappropriated lands, which belonged to that crown, passed, not to the people of the colony or State within whose limits they were situated, but to the whole people. On whatever principles this opinion rested, it did not give way to the other; and thirteen sovereignties were considered as emerged from the principles of the Revolution combined with local convenience and considerations. The people, nevertheless, continued to

consider themselves, in a national point of view, as one people, and they continued without interruption to manage their national concerns accordingly. Afterwards, in the hurry of war, and in the warmth of mutual confidence, they made a Confederation of the States the basis of a General Government. Experience disappointed the expectations they had formed from it; and then the people, in their collective and national capacity, established the present Constitution. It is remarkable, that, in establishing it, the people exercised their own rights and their own proper sovereignty; and, conscious of the plenitude of it, they declared, with becoming dignity, "We, the *people* of the *United States*, do ordain and establish this Constitution." Here we see the *people* acting as sovereigns of the whole country, and, in the language of sovereignty, establishing a Constitution by which it was their will that the State Governments should be bound, and to which the State Constitutions should be made to conform. Every State Constitution is a compact made by and between the citizens of a State, to govern themselves in a certain manner; and the Constitution of the United States is likewise a compact made by the people of the United States, to govern themselves as to general objects in a certain manner. By this great compact, however, many prerogatives were transferred to the National Government,—such as those of making war and peace, contracting alliances, coining money, etc.

If, then, it be true, that the sovereignty of the nation is the people of the nation, and the residuary sovereignty of each State in the people of each State, it may be useful to compare these sovereignties with those of Europe, that we may

thence be enabled to judge whether all the prerogatives, which are allowed to the latter, are so essential to the former. There is reason to suspect that some of the difficulties, which embarrass the present question, arise from inattention to differences which subsist between them.

It will be sufficient to observe briefly that the sovereign ties in Europe, and particularly in England, exist on feudal principles. That system considers the prince as the *sovereign*, and the people as his *subjects*. It regards his *person* as the object of allegiance, and excludes the idea of his being on an equal footing with a subject, — either in a court of justice or elsewhere. That system contemplates him as being the fountain of honor and authority, and, from his grace and grant, derives all franchises, immunities, and privileges. It is easy to perceive that such a sovereign could not be amenable to a court of justice, or subjected to judicial control or actual constraint. It was of necessity, therefore, that suability became incompatible with such sovereignty. Besides, the *prince* having all the executive powers, the judgment of the courts would, in fact, be only monitory, not mandatory, to him ; and a capacity to be advised is a distinct thing from a capacity to be sued. The same feudal ideas run through all their jurisprudence, and constantly remind us of the distinction between the prince and the subject. No such ideas obtain here. At the Revolution the sovereignty devolved on the people, and they are truly the sovereigns of the country ; but they are *sovereigns without subjects* (unless the African slaves among us may be so called), and have none to govern but themselves. The citizens of America are equal as fellow-citizens, and as joint tenants in the sovereignty.

From the differences existing between feudal sovereignties, and governments founded on compacts, it necessarily follows that their respective prerogatives must differ. Sovereignty is the right to govern a nation or State. Sovereign is the person or persons in whom that resides. In Europe the sovereignty is generally ascribed to the prince. Here it rests with the people. There the sovereign actually administers the government, — here never in a single instance. Our governors are the agents of the people, and at most stand in the same relation to their sovereign in which regents in Europe stand to their sovereigns. Their princes have personal powers, dignities, and pre-eminences: our rulers have none but official, nor do they partake in the sovereignty otherwise or in any other capacity than as private citizens.

Secondly: The second object of inquiry now presents itself; viz., whether suability is compatible with State sovereignty.

Suability by whom? Not a subject, for in this country there are none. Not an inferior; for all its citizens being, as to civil rights, perfectly equal, there is not in that respect one citizen inferior to another. It is agreed that one free citizen may sue another, the obvious dictates of justice and the purposes of society demanding it. It is agreed that one free citizen may sue any number on whom process can be conveniently executed: nay, in certain cases, one citizen may sue forty thousand; for, when a corporation is sued, all the members of it are actually sued, though not personally sued. In this city, there are forty odd thousand free citizens, all of whom may be collectively sued by any

individual citizen. In the State of Delaware, there are fifty odd thousand free citizens; and what reason can be assigned why a free citizen who has demands against them should not prosecute them? Can the difference between forty odd thousand and fifty odd thousand make any distinction as to right? Is it not as easy and as convenient to the public and parties to serve a summons on the governor and attorney-general of Delaware, as on the mayor or other officers of the corporation of Philadelphia? Will it be said that the fifty odd thousand citizens in Delaware, being associated under a State Government, stand in a rank so superior to the forty odd thousand of Philadelphia associated under their charter, that although it may become the latter to meet an individual on an equal footing in a court of justice, yet that such a procedure would not comport with the dignity of the former? In this land of equal liberty, shall forty odd thousand in one place be compellable to do justice, and yet fifty odd thousand in another place be privileged to do justice *only* as they may think proper? Such objections would not correspond with the equal rights we claim; with the equality we profess to admire and maintain, and with that popular sovereignty in which every citizen partakes. Grant that the governor of Delaware holds an office of superior rank to the mayor of Philadelphia, they are both, nevertheless, the officers of the people; and however more exalted the one may be than the other, yet, in the opinion of those who dislike aristocracy, that circumstance cannot be a good reason for impeding the course of justice.

If there be any such incompatibility as is pretended, whence does it arise? In what does it consist? There is

at least one strong, undeniable fact against this incompatibility; and that is, any one State in the Union may sue another State in this court; that is, all the people of one State may sue all the people of another State. It is plain, then, that a State may be sued; and hence it plainly follows that suability and State sovereignty are not incompatible. As one State may sue another State in this court, it is plain that no degradation to a State is thought to accompany her appearance in this court that the objection points. To what does it point? It points to an appearance at the suit of one or more citizens. But why it should be more incompatible that *all* the people of a State should be sued by *one* citizen than by *one hundred thousand*, I cannot perceive; the process in both cases being alike, and the consequences of a judgment alike. Nor can I observe any greater inconvenience in the one case than in the other, except what may arise from the feelings of those who may regard a lesser number in an inferior light. But, if any reliance be made on this inferiority as an objection, at least one-half of its force is done away by this fact, — that it is conceded that a State may appear in this court as a plaintiff against a single citizen as defendant; and the truth is, that the State of Georgia is at this moment prosecuting an action in this court against two citizens of South Carolina.

The only remnant of objection, therefore, that remains, is, that the State is not bound to appear and answer as a defendant at the suit of an individual; but why it is unreasonable that she should be so bound, is hard to conjecture. That rule is said to be a bad one which does not

work both ways; and the citizens of Georgia are content with a right of suing citizens of other States, but are not content that citizens of other States should have a right to sue them.

Let us now proceed to inquire whether Georgia has not, by being a party to the national compact, consented to be suable by individual citizens of another State. This inquiry naturally leads our attention, 1st, to the design of the Constitution; 2d, to the letter and express declaration in it.

Prior to the date of the Constitution, the people had not any national tribunal to which they could resort for justice. The distribution of justice was then confined to State judicatories, in whose institution and organization the people of the other States had no participation, and over whom they had not the least control. There was then no general court of appellate jurisdiction by whom the errors of State courts, affecting either the nation at large or the citizens of any other State, could be revised and corrected. Each State was obliged to acquiesce in the measure of justice which another State might yield to her, or to her citizens, and that even in cases where State considerations were not always favorable to the most exact measure. There was danger that from this source animosities would in time result; and as the transition from animosities to hostilities was frequent in the history of independent States, a common tribunal for the termination of controversies became desirable from motives both of justice and of policy.

Prior also to that period, the United States had, by taking a place among the nations of the earth, become amenable to the law of nations; and it was their interest, as well as their duty, to provide that those laws should be

respected and obeyed. In their natural character and capacity, the United States were responsible to foreign nations for the conduct of each State relative to the law of nations and the performance of treaties; and then the inexpediency of referring all such questions to State courts, and particularly to the courts of delinquent States, became apparent. While *all* the States were bound to protect *each*, and the citizens of each, it was highly proper and reasonable that they should be in a capacity, not only to cause justice to be done *to* each, and the citizens of each, but also to cause justice to be done *by* each, and the citizens of each, and that not by violence and force, but in a stable, sedate, and regular course of judicial procedure. These were among the evils against which it was proper for the nation — that is, the people of all the United States — to provide by a national judiciary, to be instituted by the whole nation, and to be responsible to the whole nation.

Let us now turn to the Constitution. The people therein declare that their design in establishing it comprehended six objects, — to form a more perfect union; to establish justice; to insure domestic tranquillity; to provide for the common defence; to promote the general welfare, and to secure the blessings of liberty to themselves and their posterity. It would be pleasing and useful to consider and trace the relations which each of these objects bears to the others, and to show that they collectively comprise every thing requisite, with the blessing of divine Providence, to render a people prosperous and happy: on the present occasion such disquisitions would be unreasonable because foreign to the subject immediately under consideration.

It may be asked, What is the precise sense and latitude in which the words, "to establish justice," as here used, are to be understood? The answer to this question will result from the provisions made in the Constitution on this head. They are specified in the second section of the third article, where it is ordained that the judicial power of the United States shall extend to ten descriptions of cases: 1. To all cases arising under this Constitution; because the meaning, construction, and operation of a compact ought always to be ascertained by all the parties, or by authority derived from them. 2. To all cases arising under the laws of the United States; because, as such laws constitutionally made are obligatory on each State, the measure of obligation and obedience ought not to be decided and fixed by the party from whom they are due, but by a tribunal deriving authority from both the parties. 3. To all cases arising under treaties made by their authority; because as treaties are compacts made by, and obligatory on, the whole nation, their operation ought not to be affected or regulated by the local laws or courts of a part of the nation. 4. To all cases affecting ambassadors or other public ministers and counsels; because as these are officers of foreign nations, whom this nation is bound to protect and treat according to the law of nations, cases affecting them ought only to be cognizable by national authority. 5. To all cases of admiralty and maritime jurisdiction; because as the seas are the joint property of nations, whose rights and privileges relative thereto are regulated by the law of nations and treaties, such cases necessarily belong to national jurisdiction. 6. To controversies to which the United States shall be a party;

because in cases in which the whole people are interested, it would not be equal or wise to let any one State decide and measure out the justice due to others. 7. To controversies between two or more States; because domestic tranquillity requires that the contentions of States should be peaceably terminated by a common judicatory, and because, in a free country, justice ought not to depend on the will of either of the litigants. 8. To controversies between a State and citizens of another State; because, in case a State (that is, all citizens of it) has demands against some citizens of another State, it is better that she should prosecute their demands in a national court, than in a court of the State to which those citizens belong, the danger of irritation and crimination arising from apprehensions and suspicions of partiality being thereby obviated; because, in cases where some citizens of one State have demands against all the citizens of another State, the cause of liberty and the rights of men forbid that the latter should be the sole judges of the justice due to the former, and true republican government requires that free and equal citizens should have free, fair, and equal justice. 9. To controversies between citizens of the same State claiming lands under grants of different States; because, as the rights of the two States to grant the land are drawn into question, neither of the two States ought to decide the controversy. 10. To controversies between a State or the citizens thereof and foreign States, citizens or subjects; because as every nation is responsible for the conduct of its citizens towards other nations, questions touching the justice due to foreign nations or people ought to be ascertained by, and depend

on national authority. Even this cursory view of the judicial powers of the United States leaves the mind strongly impressed with the importance of them to the preservation of the tranquillity, the equal sovereignty, and the equal rights, of the people.

The question now before us renders it necessary to pay particular attention to that part of the second section which extends the judicial power to "controversies between a State and citizens of another State." It is contended that this ought to be construed to reach none of these controversies excepting those in which a State may be plaintiff. The ordinary rules for construction will easily decide whether those words are to be understood in that limited sense.

This extension of power is *remedial* because it is to settle controversies. It is therefore to be construed liberally. It is politic, wise, and good that not only the controversies in which a State is plaintiff, but also those in which a State is defendant, should be settled. Both cases, therefore, are within the reason of the remedy, and ought to be so adjudged unless the obvious, plain, and literal sense of the words forbid it. If we attend to the *words*, we find them to be express, positive, free from ambiguity, and without room for such implied expressions. "The judicial power of the United States shall extend to controversies between a State and citizens of another State." If the Constitution really meant to extend these powers only to those controversies in which a State might be plaintiff, to the exclusion of those in which citizens had demands against a State, it is inconceivable that it should have attempted to convey that meaning in words not only so incompetent but also repugnant to it.

If it meant to exclude a certain class of these controversies, why were they not expressly excepted? On the contrary, not even an intimation of such intention appears in any part of the Constitution. It cannot be pretended, that, where citizens urge and insist upon demands against a State which the State refuses to admit and comply with, there is no controversy between them. If it is a *controversy* between them, then it clearly falls, not only within the spirit, but the very words, of the Constitution. What is it to the cause of justice, and how can it affect the definition of the word *controversy*, whether the demands which cause the dispute are made by a State against citizens of another State, or by the latter against the former? When power is thus extended to a *controversy*, it necessarily, as to all judicial purposes, is also extended to those between whom it subsists.

The exception contended for would contradict, and do violence to, the great and leading principles of a free and equal national government, one of the great objects of which is to insure justice to all, — to the few against the many, as well as the many against the few. It would be strange, indeed, that the joint and equal sovereigns of this country should, in the very Constitution by which they professed to establish justice, so far deviate from the plain path of equality and impartiality as to give to the collective citizens of one State a right of suing individual citizens of another State, and yet deny to those citizens a right of suing them. We find the same general and comprehensive manner of expressing the same ideas in a subsequent clause in which the Constitution ordains, that in all cases affecting ambassadors, other public ministers, and consuls, and those *in which*

a State shall be a party, the Supreme Court shall have original jurisdiction. Did it here mean party-plaintiff? If that only was meant, it would have been easy to have found words to express it. Words are to be understood in their ordinary and common acceptation; and the word *party* being in common usage applicable both to plaintiff and defendant, we cannot limit it to one of them in the present case. We find the Legislature of the United States expressing themselves in the like general and comprehensive manner. They speak, in the thirteenth section of the Judicial Act, of controversies where a State is a *party;* and as they do not impliedly or expressly apply that term to either of the litigants in particular, we are to understand them as speaking of *both*. In the same section they distinguished the cases where ambassadors are plaintiffs from those in which they are defendants, and make provision respecting those cases; and it is not unnatural to suppose that they would in like manner have distinguished between cases where a State was plaintiff, and where it was a defendant, if they had intended to make any difference between them, or if they had apprehended that the Constitution had made such a difference.

I perceive, and therefore candor urges me to mention, a circumstance which seems to favor the opposite side of the question. It is this: The same section of the Constitution which extends the judicial power to controversies between a State and the citizens of another State, does also extend that power to controversies to which the United States are a party. Now it may be said if the word *party* comprehends both plaintiff and defendant, it follows that the United States may be sued by any citizen between whom and them

there may be a controversy. This appears to me to be fair reasoning; but the same principles of candor which urge me to mention this objection, also urge me to suggest an important difference between the two cases. It is this: In all cases of action against States or individual citizens, the national courts are supported, in all their legal and constitutional proceedings and judgments, by the executive power of the United States; but in cases of action against them, there is no power which the courts can call to their aid. From this distinction, important conclusions are deducible, and they place the case of a State and the case of the United States in very different points of view.

I wish the state of society was so far improved, and the science of government advanced to such a degree of perfection, as that the whole nation could, in the peaceable course of law, be compelled to do justice, and be sued by individual citizens. Whether that is, or is not, now the case, ought not to be thus collaterally and incidentally decided. I leave it a question.

As this opinion, though deliberately formed, has been hastily reduced to writing between the intervals of the daily adjournments, and while my mind was occupied and wearied by the business of the day, I fear it is less concise and connected than it might otherwise have been. I have made no references to cases, because I know of none that are not distinguishable from this, nor does it appear to me necessary to show that the sentiments of the best writers on government and the rights of men harmonize with the principles which direct my judgment on the present question. The Acts of the former Congresses and the Acts of many

of the State Conventions are replete with similar ideas, and to the honor of the United States it may be observed that in no other country are subjects of the kind better if so well understood. The attention and attachment of the Constitution to the equal rights of the people are discernible in almost every sentence of it, and it is to be regretted that the provision in it which we have been considering has not in every instance received the approbation and acquiescence which it merits. Georgia has in strong language advocated the cause of republican equality, and there is reason to hope that the people of that State will yet perceive that it would not have been consistent with equality to have exempted the body of her citizens from that suability which they are at this moment exercising against citizens of another State.

For my own part, I am convinced that the sense in which I understand and have explained the words, "controversies between States and citizens of another State," is the true sense. The extension of the judiciary power of the United States to such controversies appears to me to be wise because it is honest and because it is useful. It is honest because it provides for doing justice without respect for persons, and, by securing individual citizens as well as States in their respective rights, performs the promise which every free government makes to every free citizen, of equal justice and protection. It is useful because it is honest; because it leaves not even the most obscure and friendless citizen without means of obtaining justice from a neighboring State; because it obviates occasions of quarrels between States on account of the claims of their respective citizens;

because it recognizes, and strongly rests on, this great moral truth, that justice is the same whether due from one man or a million, or from a million to one man; because it teaches and greatly appreciates the value of our free republican national government which places all our citizens on an equal footing, and enables each and every of them to obtain justice without any danger of being overborne by the weight and number of their opponents; and because it brings into action and enforces this great and glorious principle, that the people are the sovereigns of this country, and consequently that fellow-citizens and joint sovereigns cannot be degraded by appearing with each other in their own courts to have their controversies determined. The people have reason to prize and rejoice in such valuable privileges, and they ought not to forget that nothing but the free course of constitutional law and government can insure the continuance and enjoyment of them.

For the reasons before given, I am clearly of opinion, that a State is suable by citizens of another State: but lest I should be understood in a latitude beyond my meaning, I think it necessary to subjoin this caution; viz., that such suability may nevertheless not extend to all the demands and to every kind of action. For instance, I am far from being prepared to say that an individual may sue a State on bills of credit issued before the Constitution was established, and which were issued and received on the faith of the State, and at a time when no ideas or expectations of judicial interposition were entertained or contemplated.